

NO: FST-CV18-6038249-S : SUPERIOR COURT
REDEVELOPMENT AGENCY OF THE CITY : JUDICIAL DISTRICT
OF NORWALK, ET AL OF STAMFORD/NORWALK
V. : AT STAMFORD, CONNECTICUT
ILSR OWNERS, LLC, ET AL : MARCH 6, 2019

BEFORE THE HONORABLE CHARLES LEE, JUDGE

A P P E A R A N C E S:

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1 THE COURT: All right. This is the continuation
2 of the hearing in the case of Redevelopment Agency of
3 the City of Norwalk, Et al versus ILSR Owners, Et al,
4 FSTCV18-6038249. If I may have appearances of -- for
5 the plaintiffs.

6 ATTY. WILLIAMS: Good morning, Your Honor,
7 Joseph Williams, Shipman and Goodwin for the
8 Redevelopment Agency of the City of Norwalk.

9 THE COURT: Good morning.

10 ATTY. GOMES: Good morning, Your Honor, Andrea
11 Gomes, Shipman and Goodwin, also for the
12 Redevelopment Agency for City of Norwalk.

13 THE COURT: Good morning.

14 ATTY. CALLAHAN: Good morning, Your Honor, Darin
15 Callahan for the City of Norwalk.

16 THE COURT: Okay. Thank you. Defendants.

17 ATTY. RUBIN: Good morning, Your Honor, David
18 Rubin for the Milligan defendants.

19 THE COURT: Okay. Good morning, Mr. Milligan.

20 MR. MILLIGAN: Good morning.

21 THE COURT: All right. Let me just get this
22 thing opened here.

23 (Pause)

24 THE COURT: Okay. So I think what we start with
25 is the plaintiff's redirect of Mr. Sheehan, is that
26 where we are?

27 ATTY. WILLIAMS: If we're -- if we're done with

1 his cross examination.

2 ATTY. RUBIN: No, we're --

3 THE COURT: Oh, I thought you were.

4 ATTY. RUBIN: I -- no, no, no, we interrupted
5 his --

6 THE COURT: Oh, I'm sorry --

7 ATTY. RUBIN: -- cross examination for --

8 THE COURT: -- you said you had --

9 ATTY. RUBIN: -- for -- for Mr. Kleppin.

10 THE COURT: -- another hour. I'm sorry. Okay.
11 So. All right. Mr. Sheehan, if you please.

12 THE WITNESS: Good morning, Your Honor.

13 THE COURT: Good morning. Mr. Sheehan, I'll
14 just remind you you're still under oath.

15 THE WITNESS: Yes.

16 THE COURT: Okay. Mr. Rubin, please proceed.

17 ATTY. RUBIN: Sure.
18

1 **T I M O T H Y S H E E H A N**, after having been previously
2 sworn, was examined and testified as follows:

3 **CONTINUED CROSS EXAMINATION BY ATTY. RUBIN:**

4 Q Good morning, Mr. Sheehan.

5 A Good morning.

6 Q The Redevelopment plan, that was approved by the
7 Common Council in July of 2004, correct?

8 A Yes.

9 Q And how many years is that Redevelopment plan valid?

10 A The plan by state statute is valid for ten years.

11 Q And, do you know -- Okay. And what happens after the
12 expiration of the ten years?

13 A It has to be restated by the Common Council.

14 Q And is it restated, recertified? What's the word
15 that's used?

16 A It -- I don't know, specifically, but it -- it's a
17 recertification of the plan by the Common Council.

18 Q Was this Redevelopment plan recertified in 2014?

19 A It was extended by the Common Council.

20 Q Okay. And when was it extended to?

21 A It was extended, I don't know the specific date off
22 the top of my head, but we were in the midst of merging two
23 plans together as a new plan for Wall Street and West
24 Avenue.

25 Q How does it get recertified?

26 A How does it get --

27 Q Yeah, what's the process?

1 A Oh, it's -- it's the similar process, you basically
2 have to have the findings made pursuant to the statute by
3 both the Redevelopment -- by the Redevelopment Agency and it
4 has to be approved by the legislative-body.

5 Q So it goes before the Housing Authority?

6 A If there's -- I believe the requirement is if there's
7 a housing component to the plan, the Housing Authority
8 weighs in on it.

9 Q And so this would -- this plan would upon, if it were
10 to be recertified, go to the Housing Authority?

11 A No, I think the recertification is an issue in terms
12 of the legislative-body and the Redevelopment Agency.

13 Q So it's just the Common Council?

14 A And the Redevelopment Agency, yes.

15 Q Are there public hearings for that?

16 A In terms of the recertification?

17 Q Yeah.

18 A I -- I don't believe the recertification requires a
19 public hearing. We've gone through the process because
20 we're actually advancing a new plan.

21 Q And you testified that there was an extension, right?

22 A Yes.

23 Q Is the extension through the current date or has the
24 -- has the plan expired?

25 A I -- I'm uncertain as to what the -- the last
26 extension that went through the Counsel actually was.

27 Q Because Mr. Kleppin testified yesterday that the --

1 the plan was expired. Is that consistent with your
2 understanding?

3 A Again, I'd have to go back and see what the actual
4 date that it was extended out to.

5 Q It -- it's pretty important, right? It would be
6 pretty important for you to know, as the head of the
7 Redevelopment Agency, when the -- when the -- any extensions
8 for the recertification expire, right?

9 A Again, we are in the midst of, basically, pulling in
10 a new plan. My thought was that it was extended out to a
11 period in time to cover that.

12 Q I assume there's going to be a morning break at some
13 point, can you during that time find whether or not the plan
14 is expired or not? Or whether or not the extension --

15 A I -- I can --

16 Q -- covers it?

17 A -- find out the Counsel action that was taken.

18 Q I just want to know if the plan is expired or not.

19 A Yeah, I understand.

20 Q Can you -- can you find that out?

21 A Yes.

22 Q Okay. Right. Well, when we -- we know it was not
23 recertified, it's just a question of whether or not the time
24 to recertify it has been extended from 2014 through the
25 current date.

26 A Correct.

27 Q Okay. Is there a limit on how long it can -- how

1 long the plan can go without being recertified? In other
2 words, is there an end date by which it needs to be
3 recertified, or can it just be extended and extended and
4 extended ad infinitum?

5 A It can certainly be extended as long as legislative-
6 body and the -- the Redevelopment Agency seek to extend it
7 out.

8 Q What happens if it is expired? What is the process
9 if it's expired?

10 A If the plan becomes expired --

11 Q Yeah.

12 A -- ultimately, the issues relative to eminent domain
13 under that plan, all of the -- the statutory powers of the
14 plan ultimately are vacated during that period of the plan
15 being expired.

16 Q Okay. So if it's expired, in essence, you have to
17 start from scratch with a brand new Redevelopment plan under
18 Chapter 130, right?

19 A And that's what we've done in terms of this
20 particular plan.

21 Q Right, but you have to start from scratch in terms of
22 all the things -- You've alleged in your complaint there's
23 -- I'm not going to go through them, but the first few pages
24 of your complaint, starting at Paragraph 9 and going through
25 Paragraph 15, relate to or set forth everything that needed
26 to be done in the first instance in order to have this
27 Redevelopment plan approved, right?

1 A That's correct.

2 Q Is it fair to say that if the Redevelopment plan is
3 expired all the things that you've alleged relative to the
4 2004 plan would need to be redone from scratch?

5 ATTY. WILLIAMS: Objection. Does Counsel mean
6 the allegations in the complaint or the -- the steps
7 of adopting a new plan?

8 ATTY. RUBIN: The steps for the -- steps for the
9 new plan.

10 ATTY. WILLIAMS: Okay. No objection to that.

11 A The steps for a new plan?

12 Q Yeah.

13 A I'm sorry, I got lost in the question.

14 Q Sure. The -- I don't want to go through each of
15 these, you know, I'm trying to --

16 A Right.

17 Q -- cut time here. Your -- it says Paragraphs -- in
18 Paragraphs 9 through 15 all the steps that needed to take
19 place in order to establish a redevelopment area to then
20 establish a Redevelopment plan, to then get that approved at
21 all the municipal levels, right? Yes?

22 A Yes.

23 Q Does that need to start from scratch in the event
24 that the current plan is expired?

25 A Yes.

26 Q Okay. And that would actually start with having to
27 determine a -- have a redevelopment area, right?

1 A Yes.

2 Q And in order to have a redevelopment area there is a
3 requirement under the statute that a certain percentage of
4 that area be blighted, right?

5 A Yes.

6 Q And it's twenty percent blight that has to be found,
7 right?

8 A Yes.

9 Q And that would be -- that blight would need to be
10 found. Could you find that blight? Do you have the
11 authority as the Redevelopment Agency or -- withdrawn. Does
12 the Redevelopment Agency have the authority to find blight
13 in a proposed redevelopment area?

14 A The finding is basically -- well, the finding rests
15 with the Redevelopment Agency as a commission.

16 Q Who can blight properties?

17 A I'm sorry?

18 THE COURT: I'm sorry?

19 Q Who in Norwalk can blight --

20 A It's not a property finding it's an area finding.

21 Q But it's an area finding that requires individual
22 properties within that area be blighted in the amount of, at
23 least, twenty percent, right?

24 A Yes.

25 Q Okay. Who finds the blight as to the individual
26 properties in the area in order to satisfy the twenty
27 percent requirement for the area?

1 A The Agency typically would go forward and do an
2 assessment of the area based on the statutory criteria.

3 Q But does the Agency have the authority to say this
4 property is blighted, this property is blighted, this
5 property is blighted?

6 A It's an area finding.

7 Q Who finds that --

8 THE COURT: He's answered this. He said the
9 Agency has the authority to do it, and you've asked
10 this three times.

11 ATTY. RUBIN: He -- I'll --

12 THE COURT: And you're trying to get it in with
13 something else but he says we do it.

14 **BY ATTY. RUBIN:**

15 Q Isn't it correct that the blight officer, Mr.
16 Ireland, is the only person in Norwalk that has the
17 authority under statute to find blight as to the individual
18 properties within the proposed --

19 THE COURT: What statute, you're talking about
20 Chapter 130?

21 ATTY. RUBIN: Chapter 130.

22 THE COURT: Really?

23 ATTY. RUBIN: Yeah.

24 THE COURT: Okay.

25 Q Isn't it correct that the blight officer is the only
26 person under that statute that has the authority to
27 determine blight as to the individual properties within the

1 proposed redevelopment area?

2 A No.

3 Q Okay. Did Norwalk create an ordinance to supplement
4 Chapter 130, or in addition to 130, that reflects that the
5 blight officer is the only person with -- who -- in the City
6 of Norwalk who can issue a finding of blight as it pertains
7 to the properties within a proposed redevelopment area?

8 A Not to my knowledge.

9 Q Okay.

10 THE COURT: Just before we move on, Mr. Sheehan,
11 what is the term of the LDA?

12 THE WITNESS: The -- I believe the term of the
13 LDA -- I want to say that it's been out almost 20
14 years. For some reason that's sticking in my head
15 but I don't know that to be a fact.

16 THE COURT: Okay.

17 ATTY. WILLIAMS: I can check that, Your Honor.

18 THE COURT: So you don't know if it expires at
19 some point?

20 THE WITNESS: I think that the -- the completion
21 of the development was supposed to be for a specific
22 term of time.

23 THE COURT: Okay.

24 ATTY. WILLIAMS: Right.

25 THE COURT: I notice that Article 14 of the LDA
26 is called Period of Duration of Covenant and
27 (indiscernible) and Use. And that says the covenant

1 pertaining to the uses of the project property set
2 forth in Sections -- Section 401 of Part 2 shall
3 remain in effect from the execution date until July
4 11, 2024 unless extended by the Common Council.

5 THE WITNESS: I think that's accurate.

6 THE COURT: Okay. All right. It says this
7 covenant shall be a covenant running with the land
8 and it shall be binding upon the redeveloper and
9 affiliates of the redeveloper and their successors
10 and -- Excuse me, gentlemen --

11 ATTY. RUBIN: Yeah.

12 THE COURT: Please listen.

13 It should be binding upon the redeveloper and
14 affiliates of the redeveloper and their successors
15 and assigns. This covenant shall be included in any
16 fee lease or other instrument transferring any -- any
17 interest in the project (inaudible) property, right?

18 THE WITNESS: Yes.

19 THE COURT: So that's there till 2024.

20 THE WITNESS: Yes.

21 THE COURT: Okay. I'm sorry, go ahead if you
22 want.

23 **BY ATTY. RUBIN:**

24 Q If the -- if the Redevelopment plan is expired, do
25 you believe that you can enforce the LDA to affect the
26 Redevelopment plan?

27 A Yes.

1 Q And why?

2 A Because the Redevelopment -- well --

3 Q They're independent?

4 A The -- the LDA is independent of the Redevelopment
5 plan, as a I stated just previously, we're advancing a whole
6 new Redevelopment plan.

7 Q Can you reconcile for me how you enforce a brand new
8 Redevelopment plan with -- No, let me -- I'll withdraw that,
9 I'll get back to that.

10 You've testified over the course of several days, and
11 you've referenced an approved site plan in connection with
12 Phase I, is that fair?

13 A Yes.

14 Q Do you believe that the site plan for Phase I is
15 currently active?

16 A In terms of its approval?

17 Q Yes.

18 A No.

19 Q Okay. So when you say an approved site plan, what
20 are you referring to?

21 A It was approved by Zoning at one point to advance.

22 Q And do you know the current state of that site plan?

23 A I believe because there's been no activity on the
24 site that the Building Department has revoked those
25 approvals.

26 Q So is it your understanding that the site plan has
27 expired?

1 A Correct.

2 Q And -- and if the site plan has expired, and you are
3 dealing with -- what is your understanding about what will
4 have to happen next relative to -- in order to move the
5 project on Phase I forward as it pertains to the site plan?

6 A As it pertains -- oh, they would have to go back in
7 for site plan approval, to the Zoning Commission.

8 Q And that would include public hearings?

9 A That would be up to the Zoning Commission.

10 Q Okay. And if there is -- you're currently
11 negotiating with Citibank and JHM in connection with
12 developing Phase I, right?

13 A We're in mediation.

14 Q You've had discussions for three years. Proposals
15 have been provided and -- proposals have been provided.

16 A We've had discussions about what the project could
17 be, yes.

18 Q Proposals have been provided, correct?

19 A Yes.

20 Q Okay. And responses have been provided by the
21 City --

22 A Yes.

23 Q -- and the Agency, correct?

24 A Yes.

25 Q And how do you reconcile -- you've testified about
26 the two options that would be available under these
27 circumstances with respect to Citibank in terms -- and JHM

1 in terms of coming in to -- to execute the LDA as is, or
2 coming in with new thoughts that would then go before the
3 Agency, that would then go before the Commission, that would
4 then -- could then be advanced to the Common Council, right?

5 A Yes.

6 Q And all the discussions with Citibank and JHM are
7 relative to that second option, right?

8 A Yes.

9 Q And if Citibank -- if there's an agreement reached at
10 mediation as to how Phase I would proceed, that would
11 require an amendment to the LDA, correct?

12 A Most likely.

13 Q And that would -- that would need to be put forth
14 through a new site plan, correct?

15 A Yes.

16 Q And it -- if all -- if there needs to be an amendment
17 to the LDA and an amendment to the site plan, do you believe
18 that that can happen independently of considerations of
19 Phases II -- the obligations under Phases II and III?

20 A I think I said that yesterday, the answer is yes.

21 Q You said it as to the LDA but now we've got an
22 expired site plan. So I'm -- I'm asking you whether or not
23 your testimony as to that changes as a result of the fact
24 that there's now got to be, from scratch, brand new site
25 plan approval, does that effect whether or not the LDA, as
26 amended consistent with the new site plan, and as amended
27 consistent with just the LDA being amended as to Phase I, do

1 you believe that can be done in a vacuum and accomplished,
2 and you could then still enforce Phases II and III solely as
3 it pertains to the Milligan defendants?

4 A Can you repeat that? There was -- it had multiple
5 questions in it.

6 Q Yeah, it did because I'm trying to sum it up quickly.
7 But I'll break --

8 THE COURT: Would you like to -- we could read
9 it back.

10 ATTY. RUBIN: Okay. Can you read it back
11 please?

12 THE MONITOR: Sure.

13 (Whereupon audio was played back)

14 A Yes.

15 Q And explain why.

16 A The site plan -- the complexity of the site plan
17 review by the Zoning Commission is dependent upon how
18 aligned the proposed project with Phase I is with the
19 existing zoning. So if it's in line with the existing
20 zoning, it's a simple site plan review and then there's a
21 determination as to whether they want to put it out for a
22 public hearing or not.

23 So I -- I don't see that as overly complex, but given
24 my knowledge of what the -- the zoning issues are relative
25 to what's being contemplated on Phase I, the project has
26 previously been approved by the -- the Zoning Commission.
27 And but for the modifications that we might be seeking

1 relative to locational issues for -- for certain uses, I
2 don't see that as being an overly complex hurdle relative to
3 the site plan review.

4 Q Doesn't it depend -- doesn't your answer really
5 depend on what modifications ultimately are approved for
6 Phase I?

7 A I'm -- I'm answering with some level of knowledge of
8 what needs to be approved.

9 Q But doesn't your answer -- inherent in your answer
10 require a -- to first have a determination as to what is
11 being proposed by a potential redeveloper for Phase I, by
12 Citibank or by JHM?

13 A I think I answered that question.

14 Q No, it's --

15 THE COURT: No, he's saying -- he's doing it
16 with what he -- some knowledge of what the proposal
17 is likely to be.

18 Q What's the proposal likely to be?

19 A I --

20 ATTY. WILLIAMS: Objection, subject to
21 mediation. It's a -- it's a settlement discussion of
22 litigation with Citibank right now.

23 Your Honor, we -- and you don't -- you don't
24 necessarily know all this, Your Honor, but we -- we
25 had issued Citibank a notice that it was in default
26 under the LDA for Phase I. And we invoked mediation
27 under the commercial arbitration rules of the AAA, we

1 engaged in a mediation and that discussion is still
2 on going. And it was -- it has been agreed by the
3 parties that it is a confidential mediation
4 discussion unless and until there is an agreement
5 that can be made public.

6 THE COURT: And I believe that there's authority
7 for that. I think that's right.

8 ATTY. RUBIN: I'll withdraw the question, Your
9 Honor, I'll ask it differently. I -- I will ask
10 it --

11 ATTY. WILLIAMS: (Inaudible).

12 THE COURT: No, I -- I think -- I was going to
13 sustain the objection --

14 ATTY. RUBIN: That's okay.

15 THE COURT: -- so if you want to get at it
16 another way.

17 ATTY. RUBIN: I can ask it differently. One
18 second.

19 (Pause)

20 ATTY. RUBIN: That's what happens when you have
21 a house of cards.

22 **BY ATTY. RUBIN:**

23 Q Phase I has certain requirements, right?

24 A Yes.

25 Q One of them is the Globe Theater, right?

26 A Yes.

27 Q We haven't had any real discussion or there's been no

1 testimony, really, about the Globe Theater here, right?

2 A That's correct.

3 Q With respect to the -- what is being discussed in
4 terms of Citibank coming in to amend and bringing in JHM to
5 undertake the redevelopment, without getting into the
6 specifics of the numbers of what is being discussed, is
7 parking being discussed?

8 A Yes.

9 Q And is parking being discussed consistent with the
10 current state that the LDA requires 256, and the last
11 approved site plan was 155?

12 ATTY. WILLIAMS: Objection. It's an artful way
13 of making it seem like it's not asking what are the
14 terms being discussed with Citibank --

15 THE COURT: Right.

16 ATTY. WILLIAMS: -- but that's -- that's exactly
17 what it's asking.

18 ATTY. RUBIN: No.

19 THE COURT: No, you're saying is it being
20 discussed in mediation, so he can't answer that.

21 Q Well, is the -- are the residential -- is the --

22 THE COURT: You know, you can keep doing --
23 trying different things but --

24 ATTY. RUBIN: Well, I'm trying to find --

25 THE COURT: -- if it's, you know, if you're
26 asking what's being discussed at mediation, changing
27 the topic doesn't change the ground rules.

1 ATTY. RUBIN: May I make an offer?

2 THE COURT: Okay.

3 ATTY. RUBIN: The testimony has been that Phase
4 II and III can be enforced as to the Milligan
5 defendants regardless of what happens with Phase I.
6 I asked whether or not it was --

7 THE COURT: That's not quite what you said.

8 ATTY. RUBIN: -- wasn't that really dependent on
9 what was ultimately agreed to with Phase I. And the
10 answer was, well, yes, but I have an understanding as
11 to what that is.

12 THE COURT: That we're okay, yeah.

13 ATTY. RUBIN: And I want to have an
14 understanding, in general, as to what's being
15 discussed whether the residential aspect is being
16 discussed, or whether that's not being discussed.
17 Because -- and if it's not being discussed I'm
18 assuming that it's the same.

19 Whether the retail is being discussed, not what
20 the substance of it is, but whether things are being
21 discussed. Because it would seem to me that you
22 can't know whether Phase II and III can be forced if
23 under the agreement it's phased and the obligations
24 don't arise until Phase I is completed.

25 THE COURT: Well, you can make that argument in
26 post-trial briefing, no doubt. But I'm not sure, I
27 think he's bound by the confidentiality of a

1 mediation.

2 ATTY. RUBIN: Okay.

3 **BY ATTY. RUBIN:**

4 Q I asked a question, you answered a question as to
5 whether Phase II and III could be enforced against the
6 Milligan defendants if there were -- had to be a new site
7 plan and if there had to be an amendment to the LDA. Would
8 your answer be the same if an entirely new Redevelopment
9 plan had to be prepared and approved?

10 ATTY. WILLIAMS: Objection. Calls for
11 speculation.

12 THE COURT: Well, not entirely, I mean, they're
13 talking about a new urban renewal plan, so I --
14 that's not so speculative. He's saying we're --
15 we're merging, you know, West Avenue and Wall Street
16 into a new plan, so I think it's fair enough. I'll
17 overrule the objection.

18 A Yes, there is nothing that would be prohibited in the
19 -- the new Redevelopment plan governing the area that would
20 contradict what the development objectives of the LDA are.

21 Q Would you anticipate, as the head of the
22 Redevelopment Agency, that if a new site plan was required
23 for Phase I and an amendment to the LDA was required, and a
24 new redevelopment area had to be established and a new
25 redevelopment plan had to be established, that under those
26 circumstances you're going to enforce Phase III as it
27 pertains to the LDA against Wall Street. Is that what you

1 anticipate?

2 A There's nothing in the proposed redevelopment plan
3 that is contrary to the objectives -- the development
4 objectives of the LDA.

5 Q I understand that, that's not what I asked.

6 THE COURT: Mr. Sheehan, is the new
7 redevelopment, is that drafted?

8 THE WITNESS: Yes. It's -- it's actually under
9 the approval process now.

10 THE COURT: Okay. So you know what it's likely
11 to be.

12 THE WITNESS: There's already been public
13 hearings on it, it's been --

14 THE COURT: I see.

15 THE WITNESS: It's in front of the Planning
16 Committee of the Common Council for this coming
17 Thursday, headed to the Common Council for approval
18 and the Redevelopment Agency for approval.

19 THE COURT: Okay. Sorry, go ahead.

20 ATTY. RUBIN: No, I would like my question
21 answered. I asked whether he anticipated under those
22 circumstances Phase -- the LDA being enforced as to
23 Wall Street relative to Phase III, and his answer was
24 well, there's nothing preventing it from happening.

25 THE COURT: Right.

26 ATTY. RUBIN: And that's not what I asked. I
27 asked whether he believed and anticipated that under

1 those circumstances Phase III of the LDA would be
2 enforced against Wall Street to perform it as is.

3 A Yes, it --

4 Q Okay.

5 A Yes.

6 **BY ATTY. RUBIN:**

7 Q Perfect. And with respect to the new plan that's
8 going forward, how -- has there been a finding of twenty
9 percent blight in the -- Is the new redevelopment area
10 supporting the new redevelopment plan the same redevelopment
11 area as current?

12 A No. It's large (sounds like).

13 Q What -- describe the new redevelopment plan area.

14 A It's an expanded area because it incorporated two
15 plans.

16 Q And has there been a finding of twenty percent blight
17 consistent with Chapter 130 relative to the new area?

18 A The plan hasn't met its final approvals yet, as I
19 indicated, it's scheduled to have those approvals in place.

20 Q I understand, but that wasn't my question. My
21 question -- question was, has the -- in order to have a
22 Redevelopment plan you have to have a redevelopment area,
23 right?

24 A Correct.

25 THE COURT: I think he --

26 Q And in order to have a redevelopment area you have to
27 have a finding of twenty percent blight in that area,

1 correct?

2 THE COURT: No, just listen to him, he said not
3 yet.

4 Q So --

5 THE COURT: So you don't have to go through all
6 this --

7 Q -- how can there be hearings on --

8 THE COURT: -- he said not yet

9 Q -- a Redevelopment plan prior to there being an
10 established redevelopment area?

11 A I think I understand the confusion. You and I are in
12 a different place in terms of the finding. Ultimately, the
13 finding needs to be made by the Redevelopment Agency
14 Commission. And that finding is part of the final approval
15 of the plan.

16 So there has been information that's been submitted
17 that justifies the Commission making that finding, but it's,
18 ultimately, up to the Commission to ensure for itself that
19 it has met -- that the plan meets all of the statutory
20 findings that the Commission needs to make.

21 Q Did you -- did the Agency and City hire a consultant
22 in connection with that? Finding a blight?

23 A We hired two.

24 Q Who's the one you have now?

25 A We -- well, there's not one now and one later, there
26 are two.

27 Q At the same time?

1 A We had two consultants dealing with the issue of
2 making the determination of -- or making the case for the
3 Commission to be able to make the finding.

4 Q Are they concurrent or was one following the other?

5 A One followed the other but it didn't -- the issue is
6 that both presented information to make the case, both of
7 their work products are being sustained as part of the --
8 the overall plan.

9 Q Who's the -- who was the first consultant that was
10 hired?

11 A Regional Plan --

12 Q And who --

13 A -- Agency.

14 Q -- was the principal of that?

15 A Melissa -- I can't remember her last name. But --

16 Q And who --

17 A Who's the principal --

18 Q Yeah, who --

19 A -- of the company?

20 Q Yeah, in other words, who are you dealing with on
21 behalf --

22 A It's --

23 Q -- of that company?

24 A -- it's the Regional Plan Agency, it's the Tristate
25 Regional Plan Agency.

26 Q And who is the second?

27 A Harriman.

1 Q And is that Mr. Cecil?

2 A It's a person in his office.

3 Q So is that the person you're dealing with in
4 connection with the second plan -- with the second
5 consultant, Mr. Cecil?

6 A No, Emily Innes is the person that we're dealing
7 with.

8 Q Okay. Was the first consultant terminated?

9 A No.

10 Q Okay. Did the first consultant find the requisite
11 blight?

12 A Yes.

13 Q So it wasn't as if you hired the second consultant
14 because you didn't get the response that you wanted from the
15 first consultant?

16 A That's correct.

17 Q Okay. There is opposition to the redevelopment plan
18 as amended, correct?

19 A Yes.

20 Q And is there a threaten to be a class action in
21 connection with that?

22 A I don't have any knowledge of that.

23 Q Do you have knowledge that there's a threat of an
24 eminent class action relating to that?

25 A I -- I don't have any formal notification of that.

26 Q All right. Why did you hire a second consultant?

27 A When we went to the public hearing there were

1 concerns about how the finding of blight was made -- or I
2 shouldn't say blight, it's deteriorated and deteriorating
3 conditions per the statute. There -- there was concern that
4 it -- the allowable issues relative to making the
5 determination under the statute were broadly applied.

6 And then we decided that it might be beneficial if we
7 -- we got additional information at a more granular level,
8 and then used the tax assessor data relative to physical
9 depreciation of properties.

10 Q Okay. There were new zoning regulations prepared in
11 connection with the -- to be implemented in connection with
12 the new plan, right?

13 A Yes.

14 Q And those new zoning regulations decrease FAR
15 requirements, right?

16 A Yes.

17 Q And they decrease parking requirements, right?

18 A Yes.

19 Q They, in essence, try -- decrease certain things that
20 are currently at issue and problematic currently as it
21 pertains to Phase I, correct?

22 A I think there -- they're assessing issues that are
23 problematic in terms of --

24 Q They're mutually exclusive? They -- one had nothing
25 to do with the other?

26 A I -- that's exactly it. But I think the parking
27 requirements in Norwalk have been traditionally too high for

1 too long.

2 Q How often does the -- does the Redevelopment Agency
3 participate in the drafting of zoning regulations?

4 A That -- that's the -- the point that I -- I -- I'm
5 glad you asked that question because when you came back to
6 my comments in terms of working with the Zoning Department
7 in advancing redevelopment plans and projects within
8 redevelopment areas, that's exactly what it is.

9 The redevelopment plan should have the requisite
10 zoning in place to support the underlying objectives of the
11 plan. It's not our place to oversee Zoning on a project by
12 project basis. Our interaction with them is to look at the
13 zoning or the redevelopment plan area and recommend changes
14 relative to modifications that might be necessary.

15 Q How often does the Redevelopment Agency participate
16 in drafting zoning regulations?

17 A Often.

18 ATTY. WILLIAMS: Objection. What's the
19 relevance of this?

20 THE COURT: Well, it's been answered.

21 ATTY. WILLIAMS: Okay.

22 **BY ATTY. RUBIN:**

23 Q And so in essence, by assisting -- there's a more
24 hands on approach now relative to the Redevelopment Agency
25 as it pertains to the new proposed redevelopment plan that
26 maybe should have been undertaken earlier in 2008 so as to
27 have avoided --

1 THE COURT: Wait.

2 Q -- a lot of the problems that occurred relative to
3 Zoning and the Agency, correct?

4 ATTY. WILLIAMS: Objection.

5 THE COURT: Sustained.

6 ATTY. RUBIN: May I approach?

7 THE COURT: Sure.

8 So Mr. Sheehan, let me just advise you, you want
9 to just pause a little before you answer a question
10 so you can give lawyers a chance to do their job.
11 Okay.

12 THE WITNESS: Joe needs --

13 ATTY. WILLIAMS: I second that advice.

14 THE WITNESS: Joe needs to jump up a little
15 quicker.

16 ATTY. WILLIAMS: I was standing before he
17 finished talking.

18 (Pause)

19 ATTY. RUBIN: I'm referring him to A-H, Your
20 Honor.

21 THE COURT: Okay. Thank you.

22 ATTY. RUBIN: Exhibit A-H.

23 THE COURT: Now is that the map --

24 ATTY. RUBIN: Yes.

25 THE COURT: -- that's ID?

26 ATTY. RUBIN: It's ID, it's demonstrative.

27 THE COURT: Okay. Thank you.

1 (Pause)

2 ATTY. RUBIN: Your Honor, I'm just -- does the
3 Court have a copy?

4 THE COURT: I do.

5 ATTY. RUBIN: Okay.

6 THE COURT: Thank you.

7 **BY ATTY. RUBIN:**

8 Q When this -- when Phase I was approved, the site plan
9 in 2008, was Isaac Street used in connection with satisfying
10 FAR requirements.

11 A I missed the first part of the question.

12 Q Sure. Sure. I'm moving on to a different area.

13 A I understand.

14 Q Okay. So this map shows -- do you see Wall Street?

15 A Uh-huh. Yes.

16 Q The Phase I properties. And you see the Phase II
17 properties?

18 A Yes.

19 Q And you see that Isaac Street separates the Phase I
20 and Phase II properties?

21 A Yes.

22 Q And in 2008 when the site plan was approved for Phase
23 I, did that approval contemplate using Isaac Street for
24 purposes of FAR?

25 A That's my understanding from Zoning.

26 Q Did the approval in 2008 contemplate using Phase II
27 properties in order to satisfy FAR?

1 A Yes.

2 Q Okay. So FAR requirements for Phase I in 2008
3 required not just Isaac Street but also Phase II properties?

4 A That was my understanding based on information from
5 Zoning.

6 Q Okay. And with -- with respect to Isaac Street, do
7 you know when the Zoning Commission approved that portion of
8 the abandonment of Isaac Street -- Let me withdraw that, let
9 me set this up this way.

10 There's also a parking issue, there was a parking
11 issue relative to Phase I and Phase II properties, in
12 addition to there being an FAR issue, right?

13 A I believe the parking issue was subsequent to the
14 first approval if I'm not mistaken.

15 Q So the parking issue arose in or about 2016, correct?

16 A Correct.

17 Q And that was -- there was a situation where the
18 Redeveloper and the City were looking to combine Phases I
19 and II for -- in order to allow Phase II to satisfy the
20 parking requirements for Phase I under the LDA, right?

21 A And you're in the -- the 2016 approval?

22 Q I am.

23 A Yes.

24 Q And to the extent that Zoning approved that, that
25 still had no effect on the LDA, the Redeveloper still under
26 the LDA was obligated to provide 256, right?

27 A Yes.

1 Q And in order to do that, Isaac Street, which was
2 owned by the City, needed to be abandoned, correct?

3 A A portion of Isaac Street was -- was abandoned -- was
4 to be abandoned.

5 Q Just that portion really that connects the Leonard
6 Street Lot to Wall Street Place, right?

7 ATTY. WILLIAMS: Well, I -- I just want to note
8 -- I'll object on this basis only, Your Honor, that
9 this -- this document is for identification and it
10 was represented that it was only being used for
11 demonstrative purposes.

12 Attorney Rubin is gesturing about Isaac
13 Street --

14 THE COURT: Well, let's wait --

15 ATTY. WILLIAMS: -- in a way that I'm not -- I'm
16 not sure that's what was abandoned, so --

17 THE COURT: Well --

18 ATTY. WILLIAMS: -- it's not necessarily
19 shown --

20 THE COURT: No, but the question was not --
21 that's what a demonstrative is for. But the question
22 was that the abandonment proposed was limited to the
23 stretch of Isaac Street that lay between the Leonard
24 Street Lot and the Wall Street Place development.

25 ATTY. WILLIAMS: Right. And there was some
26 testimony early --

27 ATTY. RUBIN: Right, that's it.

1 ATTY. WILLIAMS: There was some testimony early
2 in the hearing about I think that the area of what
3 was abandoned had changed, or something. So all I'm
4 saying is Mr. Sheehan shouldn't and the Court
5 shouldn't think that this map necessarily reflects
6 what was abandoned.

7 THE COURT: Fair enough.

8 ATTY. WILLIAMS: It's not in -- it's not in
9 evidence for that purpose.

10 THE COURT: Okay. You can go ahead and answer
11 it, sir.

12 A In clarity, there's actually a survey of the
13 abandoned area, and it is not all of the frontage of the
14 Leonard Street Lot, nor is it the frontage of the Phase I
15 piece -- all of the frontage of the Phase I property.

16 Q So it -- it's just a portion of it.

17 A It -- yes. There's a -- there's a survey that
18 actually delineates what the abandonment is.

19 Q Is it fair to say that you really just needed a
20 bridge --

21 A It --

22 Q -- right?

23 A It connected the two parcels.

24 Q Right. So you just needed a portion of Isaac Street
25 to be abandoned and transferred so that the Phase I, that
26 portion of Isaac Street as a bridge, and the Phase II
27 properties were all in common ownership, right?

1 A That's correct.

2 Q And that was approved by the Zoning Commission in
3 2016, right?

4 A What was approved?

5 Q That abandonment of that portion of Isaac Street?

6 A I'm not aware of the Zoning Commission making a -- an
7 approval, I know it went through the 8-24 review process.

8 Q Okay.

9 ATTY. RUBIN: May I approach?

10 THE COURT: Uh-huh.

11 ATTY. RUBIN: May I have Exhibit A-J?

12 Q A-J is a -- are minutes, correct, for the Zoning
13 Commission?

14 THE COURT: You can represent it, this has been
15 admitted --

16 ATTY. RUBIN: Right --

17 THE COURT: -- right, with another witness.

18 ATTY. RUBIN: -- I'm not looking to get the
19 document in.

20 THE COURT: No, I -- Yeah, I'm just saying you
21 can just tell him I'll represent to you that these
22 are minutes.

23 ATTY. RUBIN: Okay. I understand.

24 THE COURT: Right.

25 **BY ATTY. RUBIN:**

26 Q These are minutes of the Zoning Commission, are you
27 aware that the minutes -- are you familiar with minutes of

1 Zoning -- of the Zoning Commission, what they look like?

2 A I know what the minutes of the Zoning Commission look
3 like, yes.

4 Q Right, and you know they're available on line.

5 A Yes.

6 Q Okay. And I've given you an exhibit that purports to
7 reflect Zoning Commission minutes for January 20th, 2016,
8 right?

9 A Yes.

10 Q And it's 17 pages, right? It says on the bottom left
11 page 1 of 17.

12 A Yes.

13 Q Can you please turn to page 16?

14 A Sure.

15 Q Do you see at the bottom there's a number one?

16 Actually, there's two number ones. There's a number one,
17 above it is a letter C and above that is a number one. Do
18 you see that?

19 A I see number -- Yes, there are two ones.

20 Q Okay. Let's start at the top one, and let's drop
21 from there to the letter C. It says DPW Referral, do you
22 see that?

23 A Yes.

24 Q And it says abandonment of a portion of Isaac Street
25 to Poko IWSR Developers, right?

26 A Yes.

27 Q And it says Ms. Wilson moved -- is that Dori Wilson?

1 A Yes.

2 Q Be it resolved that the DPW referral to abandon a
3 portion of Isaac Street to Poko IWSR Developers, LLC
4 submitted in accordance with Section 95-35 of the City Code
5 under an 8-24 review be approved, and -- do you see that?

6 A Yes.

7 Q And does that lead you to understand that this --
8 these meetings reflect in 2016 the approval of that portion
9 of Isaac Street that was to act as a bridge between Phase I
10 and Phase II?

11 A There would be other approvals required in the 8-24
12 review process, I'm not necessarily sure why it came over to
13 Zoning unless it was an issue that had to do with Zoning.

14 Q I understand. But is it your understanding that that
15 approval has to do with --

16 A It's seemingly they -- they approved it, yes.

17 Q Right. My question is is that approval, is it your
18 understanding that that approval is of that bridge piece of
19 Isaac Street --

20 A Oh, yes.

21 Q -- to be abandoned?

22 A Yes.

23 Q Okay. And at the bottom it says be it further
24 resolved, do you see that?

25 A Yes.

26 Q That notice of this action be forwarded to the Common
27 Council and other appropriate agencies, do you see that?

1 A I'm sorry, where are you?

2 Q The very last line, be it further resolved.

3 A Oh, yes. Okay.

4 Q It says the notice of this action be forwarded to the
5 Common Council and other appropriate agencies, right?

6 A Yes.

7 Q And what other appropriate agencies would that --
8 would that involve?

9 A I believe that -- well, there's a whole process for
10 decommissioning or abandoning a portion of the street, so
11 that's a separate process in the 8-24 review. But,
12 typically, it would go to the Planning Commission, the -- it
13 would -- clearly, it went through the Department of Public
14 Works, through their counsel committee, and then the Common
15 Council, as well.

16 Q And, so I understand, I think you testified that
17 there's a different -- there's an additional requirement for
18 this above and beyond that required by statute?

19 A There's a freeholder process in terms of
20 understanding the overall value associated with the land.
21 And it's a process that you go through in order to -- to do
22 the abandonment.

23 Q And did you call that a freeholder?

24 A Yes, it's called freeholders.

25 Q F-R-E-E-H-O-L-D-E-R?

26 A Yes.

27 Q Okay. Did that --

1 THE COURT: Mr. Sheehan, let me --

2 Q -- freeholder process --

3 THE COURT: Excuse me one second. Mr. Sheehan,
4 8-24 does that refer to the City ordinances or is
5 that a state statute? What is --

6 THE WITNESS: It's a state statute.

7 THE COURT: Okay.

8 THE WITNESS: It's with regards to
9 decommissioning municipal property, doing public --

10 THE COURT: Okay.

11 THE WITNESS: -- improvements, that type of
12 thing.

13 THE COURT: Thank you.

14 **BY ATTY. RUBIN:**

15 Q Did that freeholder, was that freeholder process --
16 well, let me get -- can I have more detail on what that
17 freeholder process requires?

18 A I'm not the expert in that process, it really is run
19 though the Department of Public Works.

20 Q Okay. And do you know if that freeholder process was
21 undertaken in connection with the decommissioning and
22 abandonment of this portion of Isaac Street?

23 A It is my understanding that it was.

24 Q Okay. And in addition to the Zoning -- the Zoning
25 Commission this needed to go to the Planning Commission and
26 the Common Council under 8-24 in order for it to -- the
27 street to have to legally be decommissioned, right?

1 A That's correct.

2 Q Did it go to the Planning Commission?

3 A Again, I didn't coordinate this process, but it's my
4 understanding that, ultimately, all of the approvals
5 necessary to -- to do the abandonment were obtained.

6 Q So the answer is yes, it went to the Planning
7 Commission?

8 A It's -- I --

9 ATTY. CALLAHAN: Objection, Your Honor.

10 Q In the -- to the best of your understanding.

11 ATTY. CALLAHAN: The proper (indiscernible)for
12 this would be --

13 THE MONITOR: Please go to the mic.

14 ATTY. CALLAHAN: -- the DPW does the abandonment
15 process. And this has been asked and answered. And
16 Attorney Sheehan has just testified to the best of
17 his knowledge this is what occurred.

18 ATTY. RUBIN: What -- I'm just asking if to the
19 best of his knowledge. Okay. I'll --

20 Q To the best of your knowledge was this approved by
21 the Common Council?

22 A My understanding is all of the approvals necessary
23 for the abandonment were obtained.

24 Q Including the Common Council?

25 A All of the approvals.

26 Q Including the --

27 A Including the --

1 Q -- Common Council?

2 A -- Common Council. And any other approval that was
3 required was obtained.

4 Q Do you know when?

5 A I don't know off the top of my head when.

6 Q Do you know what year?

7 A I'm assuming that it was obtained at some point
8 around the same time that it was going through the process.

9 Q Okay. And once a portion of a street is
10 decommissioned or abandoned, at that point in time what's
11 the state of it?

12 A I'm not the expert in this field. I can't answer
13 your questions.

14 THE COURT: Okay.

15 Q Are you aware of whether or not there was ever a
16 transfer of that portion of Isaac Street which had been
17 abandoned?

18 A My understanding is there was not.

19 (Pause)

20 Q Are you aware of whether any documents in further of
21 the -- furtherance of the transfer were ever drafted?

22 A I wasn't responsible for drafting them, I don't know
23 whether they were or were not.

24 Q Certainly, any -- there was no recording of that or
25 of any transfer on the land records, correct?

26 A To my knowledge, no.

27 Q And that's the -- isn't that true because by the time

1 that this happened, Poko, there were problems -- Poko had
2 started to build finally, but there were problems with Poko
3 at this time in terms of there being a shortfall in
4 connection with their development of Phase I?

5 A My recollection of the situation was that the -- in
6 terms of it not going forward when it -- to the Counsel when
7 it should have gone to the Counsel for final authorization
8 was that there was an issue that DPW had referenced the need
9 for an operating account for maintenance of this -- this
10 small parcel of street. There were questions that went back
11 and forth between the City and the Developer with regards to
12 that.

13 And the issue was in limbo for a long period of time
14 dealing with that particular issue. And then, I believe,
15 ultimately, the redeveloper conceded the funding was made in
16 escrow for the operating account. And that's what I
17 understood.

18 Q Thank you. Is it fair to say that the unity of
19 interest that was required in order to merge Phase I and
20 Phase II for purposes of parking through that bridge was
21 never, actually, accomplished?

22 A I believe that to be correct.

23 Q Then isn't it fair to say that Mr. Milligan's
24 purchase of those properties in 2018 did not destroy a unity
25 of interest insofar as that unity of interest never existed
26 in the first place?

27 A I think I testified to this previously though, that

1 Citibank believed that it had an interest in dealing with
2 Richard Olson with regards to his interest on the Phase II
3 parcels.

4 Q I'm not asking you about Citibank's interest, I'm
5 saying from the point -- from the standpoint of the
6 Redevelopment Agency, right, which you are the head of --

7 A Yes.

8 Q -- isn't it fair to say that Mr. Milligan's purchase
9 of those properties in 2018 could not destroy that which
10 never occurred in the first place?

11 ATTY. WILLIAMS: I'm going to -- I'll object
12 that it was asked and answered. Mr. Sheehan just
13 answered it and said it interfered with Citibank
14 which had some right to do that --

15 THE COURT: Right.

16 ATTY. WILLIAMS: -- and was -- and was
17 potentially doing it.

18 THE COURT: And, by the way, where -- I'm
19 interested in that. Is that -- do we have that
20 document? And what document is it that gave Citibank
21 interest in the Leonard Street Lot?

22 ATTY. WILLIAMS: It -- it's referred to as a
23 settlement agreement, Your Honor, between Citibank
24 and Poko that resulted in the deed in lieu of
25 foreclosure on Phase I and it gave them the right of
26 first refusal on Phase II.

27 THE COURT: So the rights should be in the deed,

1 right? Shouldn't it be in the deed in lieu? It has
2 to be somewhere. If it's a right of first refusal,
3 you've got to file those things.

4 ATTY. WILLIAMS: I mean, I will -- I will see
5 what document reflects that so that we can submit it,
6 Your Honor.

7 THE COURT: Okay. I -- I think it's an
8 interesting document potentially.

9 ATTY. WILLIAMS: Sure.

10 THE COURT: Thank you.

11 **BY ATTY. RUBIN:**

12 Q Do you know, Mr. Sheehan, if that right of first
13 refusal ran with the land? Or whether or not it was simply
14 in a settlement agreement that was not filed on the land
15 records?

16 A I don't know the specifics of that.

17 THE COURT: That's -- that's a good question, it
18 could be either way.

19 ATTY. RUBIN: Right.

20 THE COURT: But it would be worth finding out.

21 ATTY. RUBIN: Because, clearly, the purchaser is
22 relying on what's on the land records at the time.

23 THE COURT: Who knows?

24 ATTY. RUBIN: Okay. Just may we have a -- I
25 could do this openly or not, I don't have access to
26 that document. I can subpoena that document, but I
27 don't need to subpoena the document if the

1 representation is being made by counsel who has the
2 document that that document is going to be produced.

3 THE COURT: Well, in terms of which document
4 we're talking about, I asked to see the deed in lieu.

5 ATTY. RUBIN: The deed in lieu would be on the
6 land records, so I can get a copy of the deed in
7 lieu.

8 THE COURT: Well, we could save you a step.

9 ATTY. RUBIN: And the -- to the extent that
10 the --

11 THE COURT: Yeah, we'd like to --

12 ATTY. RUBIN: -- that is in the --

13 THE COURT: -- see a document that establishes
14 the right of first refusal, right?

15 ATTY. RUBIN: Okay. And -- and to the extent
16 that that exists in a document that's not on the land
17 records, that will be produced by the plaintiffs?

18 THE COURT: Yeah.

19 ATTY. WILLIAMS: Well, I -- I will look to see
20 if we possess any document that shows the right of
21 first refusal, Your Honor. I can't agree beyond that
22 to produce things that are between parties I don't
23 represent. But I will -- I will check to see where
24 it is and if it can be produced in court, then, we
25 will.

26 THE COURT: Well, and if you need a court order
27 we can do that.

1 ATTY. WILLIAMS: Sure.

2 THE COURT: And, you know, you can redact
3 everything else --

4 ATTY. WILLIAMS: Yep.

5 THE COURT: -- too, so.

6 ATTY. RUBIN: Your Honor, I've been -- I have
7 been led to believe that that document may not be in
8 the possession of Shipman or the City because it is a
9 confidential document --

10 THE COURT: Oh, it's between the bank and
11 somebody else?

12 ATTY. RUBIN: -- as between the bank and the
13 redeveloper. So I think that if Attorney Williams
14 would be acting consistent with the obligation that
15 the Court just imposed, to come back and say it's in
16 a -- in a document that we have no control over.

17 THE COURT: Sure.

18 ATTY. RUBIN: So under those circumstances, I
19 will obtain a copy of -- a certified copy of the deed
20 in lieu. And I suppose to the extent it's there,
21 it's there. And to the extent it's not there, it's
22 not there.

23 THE COURT: Well, let's see what -- let's see
24 what the City has.

25 ATTY. RUBIN: Okay.

26 THE COURT: You know, I think -- right, they may
27 not have it, but let's see.

1 ATTY. RUBIN: I mean, I could subpoena --

2 THE COURT: I mean, obviously, Mr. Sheehan is
3 aware of it, and so --

4 THE WITNESS: I -- I'm aware of it because I
5 think there's communications that reflect that it
6 exists. I never actually seen it.

7 THE COURT: Yeah. Okay. Well, let's get to the
8 bottom of it. I mean, as we say it's a -- it's a, I
9 think, a significant point as to whether it was
10 publically available or not.

11 ATTY. CALLAHAN: Yeah, I -- I could look at -- I
12 could probably try to get it. But is the purpose of
13 this -- is the argument being made that the Milligan
14 defendants don't know where the --

15 THE COURT: No, I'm asking for it. I'm asking
16 for it.

17 ATTY. CALLAHAN: Okay.

18 THE COURT: I want to see anything related -- I
19 want to see proof of the -- of that right of first
20 refusal.

21 ATTY. CALLAHAN: Yes, Your Honor.

22 THE COURT: It doesn't necessarily, I think it's
23 not dispositive, I mean, it's still, you know, there
24 -- you could still be -- Well, that's interesting,
25 can you have tortious interference if you didn't know
26 it existed? I don't know.

27 ATTY. CALLAHAN: Well, but that's why I'm asking

1 the question (inaudible) discovery.

2 THE MONITOR: I can't hear you unless you stand
3 in front of a microphone.

4 ATTY. WILLIAMS: He (indiscernible) its
5 discovery that would belie that argument.

6 THE COURT: Let's -- let's just see.

7 All right. Mr. Rubin, you have about five more
8 minutes in your hour. I know, it was a goal, but
9 let's -- let's try to.

10 ATTY. RUBIN: Yes.

11 **BY ATTY. RUBIN:**

12 Q To obtain -- withdrawn. What is the Redevelopment
13 Agency's role, if any, in connection with obtaining a CO
14 relative to Phase I?

15 A We, ultimately, have to sign off on the CO.

16 Q And so to the extent that a project or the
17 redevelopment of Phase I was undertaken consistent, fully
18 consistent with Zoning, but inconsistent --

19 A It could get.

20 Q -- with the obligations under the LDA, would the
21 Redevelopment Agency sign off on that project -- sign off on
22 the CO?

23 A Ultimately, it -- so if I'm hearing your question
24 correctly and I just want to make sure I'm answering it
25 right.

26 Q Yeah.

27 A The development -- so you're -- I think what you're

1 asking me is as the project was -- the site plan was
2 approved, if that project ultimately was built and we got to
3 the point of issuing CO's, and we determined, guess what,
4 this -- this project is completely out of sync with the --
5 the LDA. There would, ultimately, be -- that would be
6 brought back to the Redevelopment Agency and to the Common
7 Council. There would be a discussion as to it being non-
8 compliant with the LDA. What does the City want to -- what
9 does the -- what do the public parties want to do? But,
10 clearly, they would have the ability to say we're not
11 issuing the CO.

12 Q Would they also have the ability to say all right,
13 whatever, it's in -- they're not in compliance with the LDA,
14 but let's just sign off on the CO anyway.

15 A I don't think that the -- it would go that smoothly,
16 especially given this particular project.

17 THE COURT: But -- but doesn't the LD have an
18 allowance of, say, ten percent --

19 THE WITNESS: Ten percent, yes.

20 THE COURT: -- or something?

21 THE WITNESS: Yes.

22 THE COURT: Yes. Okay.

23 THE WITNESS: Yes.

24 **BY ATTY. RUBIN:**

25 Q Right, so had this -- had this project been -- had
26 this project been built at the 215 parking, and everything
27 else been consistent with the -- with the LDA, it would have

1 been a problem even if -- if it was constructed as approved
2 in 2008, right?

3 A Correct.

4 Q Let alone what was purportedly approved in two
5 thousand --

6 A Correct.

7 Q -- sixteen.

8 THE COURT: You said that the -- the decision to
9 grant the CAO -- CO to a non- -- if Phase I is non-
10 compliant would go to the Agency and the Common
11 Council?

12 THE WITNESS: Well, the -- as the other public
13 party, the Agency is the one that ultimately signs
14 off. My sense would be given the -- the important
15 nature of --

16 THE COURT: Okay.

17 THE WITNESS: -- the -- the issue, we would
18 incorporate the Common Council who is also a party to
19 the LDA.

20 THE COURT: I see.

21 **BY ATTY. RUBIN:**

22 Q And if that happened, would that -- would that --
23 that would be public, right?

24 A Oh, yes.

25 Q And would there be hearings on that?

26 A If -- if there -- on how they determine to deal with
27 that?

1 Q Yes.

2 A I would assume that -- that -- I wouldn't necessarily
3 say hearings, I think that there would be public meetings
4 with regards to that, for sure.

5 ATTY. RUBIN: Your Honor, I can stop.

6 THE COURT: Are you finished?

7 ATTY. RUBIN: No, no, I can stop. I thought you
8 -- you asked me to --

9 THE COURT: No, no, we were just -- you were
10 saying I had an hour to go yesterday, and I was
11 just --

12 ATTY. RUBIN: Oh, I understand. Oh, now, I
13 understand, I thought you were talking about the
14 morning break.

15 THE COURT: No.

16 ATTY. RUBIN: Yeah.

17 **BY ATTY. RUBIN:**

18 Q Was -- when Poko was actually building, Poko built
19 for about a year, right?

20 A About that, yes.

21 Q Okay. Give or take?

22 A Give or take.

23 Q Was it actually a little less than a year?

24 A It was just about a year.

25 Q Okay. Were they taking shortcuts? Were things
26 happening during the course of that project that were
27 causing alarm to the Agency and/or to Citibank to your

1 knowledge?

2 A There were some issues that, site construction
3 issues, that were of concern to the Redevelopment Agency and
4 the City.

5 Q Oh.

6 A You know, for example, on Isaac Street, barricades
7 when up and they went out too far. They -- they didn't get
8 permits for some of the work that they were actually doing,
9 and had to come back in and get those processed. It clearly
10 was not a smooth and efficient construction process.

11 Q Were they also making substantive changes such as
12 removing metal framing and substituting wood? Are you aware
13 of that?

14 A Removing metal framing?

15 Q Yeah.

16 A I'm -- I'm not aware of removing metal framing. My
17 understanding --

18 Q Substituting.

19 A My understanding was that there was a lot more
20 structural steel that went into the project than what was
21 originally contemplated. But I'm not aware of removal of
22 metal framing.

23 Q With respect to the -- you testified that the
24 parking, this was a unique underground parking facility that
25 had elevators, right?

26 A Yes.

27 Q Did Poko seek to reduce and eliminate the number of

1 elevators within that one year?

2 A As I said in my previous testimony, I -- I recalled
3 there being two, if not three, and I think that the original
4 proposal called for three elevators and might have gone down
5 to two.

6 Q Okay. I guess, did you -- did you find that the --
7 did you -- was it the belief -- was it your impression, as
8 head of the Redevelopment Agency, that Poko was acting in
9 good faith in connection with the construction and their
10 parking requirements?

11 A I -- I guess I have to quantify that in what
12 timeframe? Because, clearly, I did not believe they were
13 acting in good faith subsequently when I found out that they
14 were -- that they had made significant changes to the
15 parking plan as required under the LDA.

16 Q Because that -- that public parking is for the
17 benefit of the people of Norwalk, right?

18 A As I've testified, the -- the public parking was the
19 return on the investment of the underlying land that the
20 public party could -- that the public put in to the project.

21 Q And did you -- you formed the impression that Poko
22 was cheating the people of Norwalk with respect to the
23 public parking.

24 A That was my sense of it in terms of what they did
25 relative to the -- the Zoning amendments that they put
26 forward.

27 Q Okay. Drawing your attention to the verified

1 complaint, I don't know what exhibit that is. Let's finish
2 that document up.

3 THE COURT: X.

4 ATTY. RUBIN: I have an X on mine but I didn't
5 know that that was the exhibit number. Thank you.

6 (Pause)

7 **BY ATTY. RUBIN:**

8 Q Drawing your attention to page 42, the count for
9 Declaratory Relief.

10 (Pause)

11 A Yes.

12 Q Paragraph 205, Subsection A. Do you see that?

13 A I do.

14 Q It says ILSR's conveyance of the properties to Wall
15 Street is null and void or should be declared void because
16 ILSR never had the authority pursuant to the LDA to transfer
17 the properties without the Agency's prior written consent.
18 Do you see that?

19 A I do.

20 Q What did you mean when you say authority? What
21 authority didn't ILSR have?

22 A They were operate -- they were a party to the LDA,
23 and, ultimately, they were to, my understanding of it, was
24 that they were to abide by what the LDA puts forward with
25 regards to the sale of property. And insomuch as the Agency
26 did not consent to the sale, they didn't have the authority
27 to make -- to enter into that transaction.

1 Q Okay. Turning to page 44, the Prayer for Relief.

2 (Pause)

3 Q I'm gonna -- I'm going to read you a sentence, it's
4 actually from a document that your counsel filed, it's
5 Document 151, Plaintiff's Reply to Defendants January 4th,
6 2019 Objection, it's 151 on the docket.

7 And it says, at its heart, this action concerns
8 plaintiffs' desire to undo the various property transfers,
9 agreements, and actions executed or taken by the defendants
10 in violation of or contrary to the Redevelopment plan, LDA,
11 and amended LRA. Plaintiffs' ultimate prayer for relief, if
12 it can be summarized in one sentence, is for the -- is for
13 this Court to declare null and void -- is to declare void
14 and undo all those actions, order ILSR to perform its
15 contractual obligations, and prevent the Milligan Defendants
16 from taking any further harmful actions with respect to the
17 redevelopment area properties.

18 Is that accurate -- is that accurate as to your
19 understanding as to what ultimately the Redevelopment Agency
20 is seeking as its relief in this action?

21 ATTY. WILLIAMS: I'm going to object because
22 it's misleading and it's unfair to Mr. Sheehan for
23 Attorney Rubin to do that and here's why. He opened
24 up the prayer for relief in our amended complaint,
25 and put that in front of him. Now, he's reading from
26 a different motion that I think -- he didn't say what
27 the title of it was, I don't know it by the number.

1 But I think --

2 ATTY. RUBIN: I did.

3 ATTY. WILLIAMS: I think that's our motion to
4 compel.

5 ATTY. RUBIN: No, no, no, no, I did, I read it.
6 I said it was Plaintiffs' reply to defendants January
7 4th, 2019 objections dated January 14th, 2019.

8 THE COURT: It was an objection to what?

9 ATTY. RUBIN: It was the objection to the
10 expedited discovery that -- that -- we filed an
11 objection to their --

12 THE COURT: Right.

13 ATTY. RUBIN: -- expedited discovery.

14 THE COURT: So it was a discovery thing. Okay.

15 ATTY. WILLIAMS: So we're making an argument in
16 that motion that Mr. Sheehan doesn't have it in front
17 of him, and is not a -- is not our pleading. It's a
18 discovery motion that makes a general summary of what
19 we're seeking in it. It's not fair to ask him is
20 that everything you're seeking when the complaint
21 speaks for itself.

22 ATTY. RUBIN: I'm not trying -- I didn't ask him
23 if it was everything they were -- I'll -- Sorry, Your
24 Honor.

25 THE COURT: Well --

26 ATTY. WILLIAMS: Well, it's being --

27 THE COURT: -- let's do this. Rather than

1 asking him to adopt something that was in a discovery
2 motion, why don't you, you know, why don't you take
3 it in pieces?

4 ATTY. RUBIN: Okay.

5 THE COURT: And say, you know, was the Agency
6 seeking to undo the -- the transfer? You know, that
7 -- let's do that --

8 ATTY. RUBIN: Sure.

9 THE COURT: -- if you want.

10 **BY ATTY. RUBIN:**

11 Q Is the Agency attempting in this action to undo the
12 various property transfers?

13 A Yes.

14 Q And to declare void the transfer from ILSR to Wall
15 Street?

16 A Yes.

17 Q And either to have Wall Street be ordered to
18 quitclaim the property back to ILSR or to have the transfer
19 voided in the first place so that it never happened?

20 A Yes.

21 Q Okay. That involves taking the property away from
22 Wall Street, correct?

23 A Yes.

24 Q And giving the property back to ILSR, right?

25 A Yes.

26 Q The relief involves both parties, right?

27 A That's my understanding.

1 Q And so that remedy for this action, specifically and
2 inherently, is as to both the Milligan defendants and ILSR,
3 correct?

4 ATTY. WILLIAMS: Your Honor, this -- this is for
5 the Agency's legal counsel to argue, and it can't be
6 binding upon Mr. Sheehan to figure out exactly the
7 arguments his counsel is going to make as to what
8 relief is being sought as to which parties.

9 THE COURT: I think also it's very, not even
10 implicit, explicit in this are legal conclusions.
11 You know, if you void a transfer, what happens? And,
12 you, you know, you're -- you're saying doesn't that
13 mean it has to go back to ILSR. If they don't exist,
14 who knows? I mean, I think this is something we all
15 have to figure out.

16 But you do have him saying he wants to void the
17 transfers.

18 Q If the transfers are void and the Agency and the City
19 get the relief that they're seeking in this case, isn't it
20 correct that the property goes back to the very party that
21 you just testified tried to cheat these people of the City
22 of Norwalk?

23 A It goes back to the party that's subject to the LDA.

24 Q Which is the party that you just testified tried to
25 cheat these people of the City of Norwalk?

26 A I answered your question.

27 THE COURT: You're referring to Poko or to

1 Milligan?

2 ATTY. RUBIN: No, to Poko.

3 THE COURT: Oh.

4 ATTY. RUBIN: It goes back to ILSR which is a
5 subsidiary of -- of Poko.

6 THE COURT: Okay.

7 **BY ATTY. RUBIN:**

8 Q The right of reentry that -- you are aware that there
9 are those four remedies in the Remedy Section, I'm not going
10 to pull back the LDA --

11 A Yes.

12 Q -- but there are four remedies, right?

13 A Yes.

14 Q That right of reentry at this point in time is solely
15 as to the Milligan as to Wall Street, right? The Milligan
16 defendants.

17 A The Agency's right of reentry.

18 Q Yes.

19 A Yes.

20 Q And so the Agency has remedies under that provision
21 of the LDA specifically set forth as to the unpermitted
22 transferee, right?

23 ATTY. WILLIAMS: Objection, calls for a legal
24 conclusion. And the defendants are arguing first
25 that it can't be enforced against the Milligan
26 defendants in their motion to strike, and now in a
27 motion for summary judgment that we're limited to the

1 remedies specified in the contract. It's not for Mr.
2 Sheehan -- it's not appropriate to ask Mr. Sheehan --

3 THE COURT: Well, I -- I don't, you know, I
4 think we don't need those middle sections because
5 their -- what, their motion says whatever it says,
6 I'm not sure it's exactly correctly summarized. But
7 the -- the question was -- you're saying, well, he's
8 already said -- he's already said he has the right of
9 reentry against the Milligan's, right? Isn't that
10 what you want?

11 ATTY. RUBIN: Yeah, and I want him to
12 acknowledge that the LDA provisions under the
13 contemplated -- that were for this very breach
14 contemplate remedies against the unpermitted
15 transferee.

16 THE COURT: You mean he said --

17 ATTY. WILLIAMS: I object to that.

18 THE COURT: He said we have a right -- I think
19 he said we have a right --

20 THE WITNESS: We have a right of reentry --

21 THE COURT: -- of reentry against the
22 Milligan's.

23 THE WITNESS: -- to that parcel.

24 THE COURT: Yeah, that's right.

25 THE WITNESS: It's only one parcel.

26 THE COURT: That's a better way to say it. Just
27 one parcel?

1 THE WITNESS: Yes, it's the Leonard Street Lot,
2 that's all we -- it would be that parcel alone that
3 we have the right of reentry.

4 ATTY. RUBIN: Right, they have the right of
5 reentry as to the parking lots only.

6 THE COURT: Okay.

7 **BY ATTY. RUBIN:**

8 Q And there's also a damages provision under that, and
9 that -- those damages are available and are actually being
10 sought both against the Milligan defendants and ILSR,
11 correct?

12 ATTY. WILLIAMS: Objection. That incorrectly
13 and it -- it mischaracterizes our complaint because
14 we amended the complaint to not seek breach of
15 contract or specific performance against the Milligan
16 defendants. We're not making a claim under the
17 contract against the --

18 THE COURT: But, he -- no, he said --

19 ATTY. WILLIAMS: -- Milligan's.

20 ATTY. RUBIN: Attorney Williams --

21 THE COURT: -- damages.

22 ATTY. RUBIN: -- keeps making speaking
23 objections.

24 THE COURT: No, no. But, you know, he said
25 damages, and you are seeking damages for tortious
26 interference and various --

27 ATTY. RUBIN: Right.

1 THE COURT: -- other things.

2 ATTY. WILLIAMS: The question, I thought the
3 question, Your Honor, was are you seeking damages as
4 provided or contemplated under the contract against
5 the Milligan defendants.

6 THE COURT: Oh.

7 ATTY. RUBIN: I would request that to the extent
8 Attorney Williams has an objection as to the form
9 that he not --

10 THE COURT: Yeah, that's true.

11 ATTY. RUBIN: -- keep providing argument as to
12 what is legally being argued so as to influence
13 testimony.

14 THE COURT: Yeah.

15 ATTY. RUBIN: And he's been doing that the whole
16 hearing.

17 THE COURT: Right.

18 ATTY. WILLIAMS: I'm not trying to influence any
19 testimony, but I -- it's a misleading question and I
20 should be able to say why because it mischaracterizes
21 what's in --

22 THE COURT: The better form is to object and if
23 I ask you for a ground, you can explain it.

24 ATTY. WILLIAMS: Okay.

25 THE COURT: So --

26 Q Is the Agency --

27 THE COURT: But -- but it's sustained.

1 ATTY. RUBIN: Okay.

2 (Pause)

3 **BY ATTY. RUBIN:**

4 Q You testified that the Agency has been damaged
5 because the demolition of one of the buildings on 21 Isaac
6 Street has taken that property off the tax rolls, correct?

7 A I think I used that as an example, yes.

8 Q Are you aware of whether or not the demolition of
9 that property and the improvements that Mr. Milligan has
10 made to that property after the demolition had actually
11 increased the value of that property on the tax rolls?

12 A The increase in the -- the taxes is irrelevant, but
13 if you say it has, it has.

14 THE WITNESS: Your Honor, may I have some water?

15 THE COURT: Sure. Do you have a cup? Okay. Do
16 you have a pitcher.

17 **BY ATTY. RUBIN:**

18 Q Drawing your attention -- Oh, I'm so sorry. Drawing
19 your attention to page 45, the final page of the complaint.
20 In Subsection G you're seeking costs and attorneys' fees?

21 A Yes.

22 Q How much are the attorneys' fees that the Agency has
23 been invoiced in connection with these proceeding -- this --
24 with this action?

25 A Oh, I can only give you what has been logged to date,
26 and I think I just went through this with Ms. Chapman
27 (Phonetic). As of, I think the date was December 31st, it's

1 been \$108,000. But I think I was very clear that that was
2 not reflective of the time that we were in court in
3 December; that would be coming forward in the January
4 invoice. So I'm -- I'm very confident that we're two
5 hundred thousand dollars plus.

6 Q If that hundred and eight doesn't include the trial
7 in December, isn't it likely that you're closer to three
8 hundred?

9 ATTY. WILLIAMS: Objection.

10 A I'm -- I --

11 ATTY. WILLIAMS: Wait, objection, Mr. Sheehan.

12 A Yeah.

13 ATTY. WILLIAMS: He shouldn't be asked to
14 speculate on that, and it's really not pertinent at
15 the moment because this goes to our claim under
16 CUTPA.

17 THE COURT: Sustained.

18 Q Doesn't -- do you get invoiced on a regular basis?

19 A Monthly.

20 Q So how come you haven't received -- or have you
21 received invoices for January and February in connection
22 with this action?

23 ATTY. WILLIAMS: Objection. This is a -- this
24 is a hearing on our application for temporary
25 injunction. We're not seeking attorneys' fees yet.

26 If and when we try the case on the merits and
27 the Court awards us relief under CUTPA, we would then

1 seek an award of attorneys' fees and present all of
2 them at that time.

3 THE COURT: Right. Sustained.

4 ATTY. RUBIN: Okay. No further questions.

5 THE COURT: Fine. Right on time. Let's take
6 the break for the mid-morning break, 15 minutes.
7 We'll be back at quarter of twelve. Not exactly on
8 time but, you know, close enough.

9 (Recess)

10 (Back in Session)

11 THE COURT: Would you mind looking outside and
12 seeing if they're around?

13 ATTY. WILLIAMS: Of course.

14 THE COURT: Thank you.

15 (Pause)

16 THE COURT: All right. Mr. Williams, are you
17 going to do the redirect?

18 ATTY. WILLIAMS: Thank you, Your Honor.

19 **REDIRECT EXAMINATION BY ATTY. WILLIAMS:**

20 Q Mr. Sheehan, it's good to see you again.

21 A It's nice to see you, as well.

22 Q It's been quite a while.

23 We -- I believe you began your cross examination by
24 Attorney Rubin on December 11th, 2018, so I want to first
25 take you to some of the questions that Attorney Rubin began
26 asking you on December 11th about Citibank and Phase I.
27 Okay.

1 You acknowledged in your questioning by -- in your
2 responses to Attorney Rubin that the Agency is mediating
3 with the bank even though it is not the redeveloper, and
4 what -- correct?

5 A That's correct.

6 ATTY. RUBIN: Objection. He's -- is the
7 question asking him exactly what his testimony is?
8 If there's a transcript that exists, if he's doing a
9 foundation, that's fine. But either it's -- it's got
10 to be his understanding of something or he actually
11 should read the testimony in if that's what he's
12 asking him to confirm.

13 ATTY. WILLIAMS: Actually, the way it's always
14 worked for me is on redirect I ask the witness if he
15 recalls being asked a certain question on cross
16 examination so that I can bring everybody's attention
17 to it before I ask him some redirect questions.

18 THE COURT: Fair enough.

19 ATTY. WILLIAMS: That is what I'm doing, and it
20 is --

21 THE COURT: Overruled.

22 ATTY. WILLIAMS: -- contained in the transcript
23 actually at page 153 on December 11th.

24 THE COURT: Go ahead.

25 ATTY. WILLIAMS: Thank you.

26 **BY ATTY. WILLIAMS:**

27 Q Do you recall being asked about that, Mr. Sheehan?

1 A Yes.

2 Q Why is -- why is the bank in a different position
3 with the Redevelopment Agency compared to Wall Street
4 Opportunity?

5 A The bank is a recognized lender and a party to the
6 Agreement.

7 Q And is that why the Agency is willing to mediate with
8 Citibank and not with Wall Street?

9 A That is.

10 Q And it -- we also heard several questions about
11 whether or not there's a redeveloper for Phase I. Is
12 Citibank required to seek Agency approval for a new
13 redeveloper for Phase I in the way that you outlined in your
14 letters to Wall Street?

15 A No, it's a more direct process.

16 Q All right. And we've -- we've also heard that the
17 Agency has had discussions with Citibank about moving Phase
18 I construction forward, right?

19 A Yes.

20 Q And are -- are they the subject of an ongoing
21 mediation discussion at this time?

22 A Yes.

23 Q What is, without getting into the exact terms being
24 discussed between the parties, what is the current status of
25 those discussions?

26 A The -- a plan has emerged that is slated to become
27 before the public parties in Executive Session in the -- the

1 next few days.

2 Q In the -- in the next --

3 A In the next couple --

4 Q -- few days you said?

5 A -- of days for the Redevelopment Agency, and within
6 the next couple of weeks for the Common Council.

7 Q All right. And are you hopeful that the Agency will
8 be able to reach an agreement with the bank that moves the
9 project forward?

10 A I remain hopeful of that.

11 Q Now, I want to ask -- the next topic I want to ask
12 you about is the interaction of the LDA with Zoning. And
13 Attorney Rubin asked you about the interaction of the Agency
14 acting under an LDA with Zoning. You testified back in
15 December that the LDA in this instance, the LDA we're
16 talking about in this case is very deferential to Zoning, do
17 you recall that?

18 A I do.

19 Q What did you mean by that?

20 A There's actually language in the -- the LDA that --
21 that indicates that the requirements of Zoning that might be
22 above and beyond the requirements of the LDA are ultimately
23 what -- what govern the project.

24 Q And --

25 A But the -- just to be clear about that --

26 Q Sure.

27 A -- the -- the LDA, I think the best way to -- to

1 state it is that the LDA sets the floor and then Zoning has
2 the ability to set whatever ceilings it wants relative to
3 their regulations.

4 Q Right. And so regardless of what actions the Zoning
5 Commission takes, does the LDA still govern the parties to
6 the LDA?

7 A Yes.

8 Q And does an action by the Zoning Commission amend the
9 LDA in any way?

10 A No.

11 Q Is it -- is it part of your job, by the way, to
12 (indiscernible) project through Zoning?

13 A No.

14 Q Why do you say that?

15 A The Redevelopment Agency has the responsibility to
16 work with Zoning relative to ensuring that there is
17 requisite zoning to support the plans that we advance. And
18 that there's consistency between the land use policies of
19 the City and the objectives of the redevelopment plan.

20 Our job is not to sit with Zoning and manage their
21 process relative to the Zoning Commission's review of each
22 and every project that's in every development plan area.

23 Q And so if, as happened here, a redeveloper obtains a
24 zoning approval for a plan that does not comply with the
25 LDA, does that relieve the redeveloper of its obligations to
26 construct a plan consistent with the LDA?

27 A No.

1 Q And even if that means the redeveloper has to go back
2 to Zoning to amend their approval?

3 A That would be the case, yes, they would have to do
4 that.

5 Q Let's turn now to Poko. And Attorney Rubin in your
6 first few days of cross in December pointed out the ways in
7 which Poko has not complied with its obligations under the
8 LDA, including an acquisition of property. Is it fair to
9 say that we know what Poko did and what it didn't do?

10 A I think it --

11 ATTY. RUBIN: Object to form.

12 THE COURT: It's vague, right? Yeah, why don't
13 you be a little more detailed. Sustained.

14 **BY ATTY. WILLIAMS:**

15 Q Is the Agency well aware of what Poko did to comply
16 with the LDA and what Poko did not do to comply with the
17 LDA?

18 A I'd like to think that today we know all of that
19 information.

20 Q And was the Agency satisfied with Poko's progress
21 under the LDA?

22 A At various points, no.

23 Q In fairness, what factors impeded Poko's progress to
24 some extent along the way?

25 ATTY. RUBIN: Object to form.

26 THE COURT: Overruled.

27 A There was an immediate Zoning challenge relative to

1 the project that took -- was a protracted period in time.

2 Q I'm sorry, you mean, like on an appeal of a --

3 A Yes.

4 Q Okay.

5 A There also was an issue -- well, the recession came
6 into play for a number of years, that ultimately caused the
7 project to have to be restructured and the capital staff
8 reconsidered as to how the project was going to be financed.
9 All of that takes time.

10 Q And was the slowness in Poko's progress due in any
11 way to a lack of resolve on the part of the Agency to see
12 the project completed?

13 A The -- the public parties have always maintained the
14 commitment to having this project completed.

15 Q And what impact has the passage of time had on the
16 urgency felt by the Agency to complete all phases of the
17 Wall Street Place redevelopment project.

18 A It's only increased it.

19 Q Let's turn now to the property acquisition status.
20 Attorney Rubin asked you about the properties that were
21 envisioned as part of the project site and are still in
22 private hands, do you recall that?

23 A Yes.

24 Q And can those properties still be acquired by the
25 Agency, if necessary?

26 A Assuming that we take the additional step of going to
27 the Common Council for approval on that, yes.

1 Q Sure. And is it the Agency's goal that they be
2 acquired for the project, either by a redeveloper or by the
3 Agency?

4 A The intent is to have property acquisition, yes.

5 Q Okay. And subject to the Counsel approval that you
6 just mentioned, can the Agency use eminent domain to acquire
7 those properties if needed?

8 A If needed, yes.

9 Q Before the Agency would undertake that -- the process
10 to acquire any of those properties, what must be done by the
11 Redeveloper pursuant to the LDA?

12 A The Redeveloper needs to evidence back to the
13 Redevelopment Agency that it's made a good faith effort to
14 acquire the properties in negotiations with the existing
15 property owner.

16 Q Okay. All right. And now I'd like to turn you to
17 the LDA deadlines with respect to Phase II. All right.
18 Attorney Rubin asked you about the improvements in Phase I
19 that need to be completed before the deadlines under the LDA
20 for Phase II are triggered, and you agreed that construction
21 plans for Phase II are not yet required to be submitted, do
22 you recall that testimony?

23 A That's what the LDA indicates, yes.

24 Q And you also testified, I believe, this -- this past
25 week, that the entire redevelopment project was a phased
26 project when it was in unified ownership, is that correct?

27 A Yes.

1 ATTY. RUBIN: Object.

2 Q Now that --

3 ATTY. RUBIN: Objection. I object to that
4 question.

5 ATTY. WILLIAMS: That was his testimony, Your
6 Honor.

7 THE COURT: Well, he's already answered.

8 ATTY. RUBIN: Yeah, I, you know --

9 **BY ATTY. WILLIAMS:**

10 Q Now that the project has divided ownership, is
11 anything preventing the owner of the Phase II properties
12 from moving forward with a redevelopment plan?

13 A Can you repeat the question, please?

14 Q Now that the properties are in divided ownership, we
15 know that Wall Street Opportunity Fund owns the Phase II
16 properties, correct?

17 A Yes.

18 Q Is anything preventing Wall Street Opportunity Fund
19 from moving forward with a redevelopment plan on Phases II
20 and III?

21 A No.

22 Q Could a plan for Phase II advance without Phase I
23 being completed?

24 A Yes.

25 Q And is that true even with the FAR and parking issues
26 on Phase I that we've heard about?

27 A Yes.

1 Q Does the fact that -- the fact that the Phase II
2 plans are not required yet to be submitted by the LDA, they
3 can be but they're not required to be, does that mean that
4 the owner of the Phase II and III properties can take
5 actions that are inconsistent with the LDA?

6 A Well, insomuch as the current owner isn't a party to
7 the LDA, the -- that, I think, is an underlying question,
8 but --

9 Q Well, let me ask it this way. We --

10 THE COURT: No, don't -- excuse me, don't
11 interrupt him.

12 ATTY. WILLIAMS: Sure, sorry.

13 THE COURT: I mean, you know --

14 ATTY. WILLIAMS: Sure.

15 THE COURT: -- he's your witness.

16 ATTY. WILLIAMS: You're right. Sorry.

17 A And I think we have seen actions that have been
18 inconsistent with the LDA, but that -- that's clearly not
19 what we want going forward.

20 Q And the Agency has maintained, has it not, that the
21 LDA is binding on subsequent transferees with regard to the
22 development covenants?

23 A Yes.

24 Q And does the Agency believe that Wall Street
25 Opportunity Fund has acted inconsistently with those
26 covenants?

27 A Yes.

1 Q All right. Mr. Rubin also asked you about specific
2 properties located at 11 and 13 Leonard Street. I believe
3 you acknowledged that though the owner of those properties,
4 which is not Wall Street, has an application before Zoning
5 to build apartments. And he asked you, and I believe you
6 agreed, that the Agency had not opposed that application, is
7 that right?

8 A That's correct.

9 Q And what -- were those two parcels previously owned
10 by the City of Norwalk?

11 A No.

12 Q Can you tell us --

13 THE COURT: Excuse me, Mr. Williams, just --

14 THE WITNESS: Do you need to see the --

15 THE COURT: -- I'm not following you here.

16 Which parcels are -- have a proposal to build
17 apartments.

18 ATTY. WILLIAMS: It's 11 and 13 Leonard Street.

19 THE WITNESS: This map doesn't --

20 ATTY. WILLIAMS: Are they --

21 THE COURT: I don't see where that is.

22 THE WITNESS: They're not on that map.

23 THE COURT: Okay.

24 ATTY. WILLIAMS: Let me --

25 ATTY. RUBIN: We've got the map, Your Honor.

26 THE WILLIAMS: Yeah, thank you.

27 THE COURT: Thank you.

1 ATTY. RUBIN: It's D.

2 ATTY. WILLIAMS: Yeah.

3 Q Are you able -- are you able to point them out on
4 Exhibit D for the Judge?

5 A I have to get myself --

6 THE COURT: You're blocking it.

7 THE WITNESS: I'm sorry.

8 ATTY. RUBIN: I think if you lift it up to the
9 Google Map underneath it you'll be able to see it --

10 THE WITNESS: Yeah.

11 ATTY. RUBIN: -- better.

12 THE WITNESS: Thank you. So it's these --

13 ATTY. RUBIN: May I approach, Your Honor?

14 THE WITNESS: -- two properties here, Your
15 Honor.

16 THE COURT: Oh. Okay. And are they in Phase
17 II?

18 THE WITNESS: They are part of the -- the site
19 that -- the two -- the Parcel 2A.

20 THE COURT: Okay. I see, and they're down on
21 Leonard Street?

22 THE WITNESS: Yes.

23 **BY ATTY. WILLIAMS:**

24 Q Are they Phase III or -- or II within Parcel 2A? Do
25 you recall what -- what Phase they are in?

26 A I don't think that those were in the -- the initial
27 proposal under Poko --

1 Q Okay.

2 A -- that I can recall.

3 Q Thank you.

4 A Yes.

5 (Pause)

6 Q Are you familiar with --

7 THE COURT: So could you just back up? I, you
8 know, I was kind of thrown off here. So what is the
9 question about those parcels?

10 ATTY. WILLIAMS: Well, first I was just
11 establishing what was asked previously, Your Honor,
12 that on those two properties the owner had an
13 application pending to building apartments.

14 THE COURT: Okay.

15 ATTY. WILLIAMS: And it was pointed out on cross
16 examination that the Agency has not opposed that
17 application, and that's what I was going to follow up
18 on.

19 THE COURT: All right.

20 Q Can you -- Are we also be able to point out to the
21 Court Academy Street Extension on the map if I hold it up
22 again?

23 A I don't think we have it on that map.

24 Q It's not on there?

25 A No.

26 Q Or roughly where it would be on --

27 THE COURT: I remember --

1 A It would be on --

2 Q -- in relation to (indiscernible)?

3 THE COURT: I remember that discussion.

4 A It's -- it's actually on the other side here, those
5 two properties were being considered as the entry way for a
6 much larger public infrastructure project that connected
7 Academy's -- extended Academy Street North into the -- the
8 project site from the South all the way to Podmore (Sounds
9 like) Street.

10 So it was, basically, a not a way to deal with
11 connecting the projects as a secondary means of access and
12 egress that wasn't a primary arterial.

13 THE COURT: Uh-huh.

14 **BY ATTY. WILLIAMS:**

15 Q And it -- in relation to the Central Master Site Plan
16 approved under the LDA, what's the status of Academy Street
17 Extension today?

18 A There were discussions with the City and the -- the
19 Common Council, specifically, with regards to extending
20 Academy Street. Given the land acquisition costs that were
21 associated with that, the City made the determination that
22 it did not want to advance that infrastructure project.

23 Q So -- so does the proposed development of apartments
24 on 11 and 13 Leonard Street affect the ability to effectuate
25 the redevelopment plan as it -- as it currently is approved?

26 A No, it's consistent with the -- the thought process
27 that we want more residential housing in the area.

1 Q Okay. Next area is that Attorney Rubin asked you
2 about the infrastructure improvements listed in the LDA that
3 are not yet completed. And I believe you went through that
4 some of -- some of them have been completed, is that right?

5 A That's correct.

6 Q And who is responsible for the design and engineering
7 work of the infrastructure improvements?

8 A The redeveloper.

9 Q And what's -- what's been the holdup on completing
10 those?

11 A The only thing that we have been provided, to date,
12 is the -- the preliminary concepts of the offsite
13 improvements.

14 The issue of the relocation of the electrical service
15 that was on the site, that was done to -- by the public
16 parties to accommodate -- develop it -- other development
17 that was happening in the area.

18 Q And if Wall Street or some other entity of Jason
19 Milligan were to become the approved redeveloper, would they
20 have to step up and pay those expenses?

21 A Yeah, that is a burden that is on -- under the LDA
22 that burden is on the redeveloper.

23 Q Does the fact that some of the infrastructure
24 improvements are incomplete prevent a redeveloper from
25 designing a site plan for the Phase II improvements in
26 seeking Zoning approval for it?

27 A No.

1 Q Is that somewhat -- is that something that you would
2 expect someone interested in being a redeveloper to be
3 doing?

4 A Well, you would certainly want to have the -- the
5 understanding of the utility service and what needed to be
6 adjusted to accommodate your development, so yes.

7 Q And has Jason Milligan presented a site plan to the
8 Agency for redeveloping the properties that he purchased in
9 a way that would be consistent with the LDA?

10 A No.

11 Q And you were also asked on cross examination about
12 the list of required Phase I improvements. I believe we
13 were looking at the amended LDA at that point. And if I
14 heard you correctly, it sounded like most of those
15 requirements have been met other than finishing the
16 building, is that a fair statement?

17 A For the most part, yes.

18 Q As for what's left to be done on Phase I, you also
19 testified about resolving the Zoning issue and amending the
20 LDA. And I believe you testified it would require about 90
21 days to do those things. Do you recall that testimony?

22 A 90 days to move through the -- the entitlement
23 process, yes.

24 Q Right.

25 THE COURT: Could we -- can we just rewind for a
26 minute?

27 THE WITNESS: Yes.

1 THE COURT: When you were saying how you're
2 recalling the testimony, and I'd like to just be
3 refreshed about that, you said that most of the site
4 improvements for Phase I had been completed, right?

5 ATTY. WILLIAMS: I -- I asked him if that had
6 been his testimony that most of them are done except
7 for finishing the building that's -- that's --

8 THE COURT: Okay. For example?

9 THE WITNESS: For example, the -- the
10 foundations are in.

11 THE COURT: I see.

12 THE WITNESS: The -- the -- the building is
13 vertical so --

14 THE COURT: Right.

15 THE WITNESS: -- those improvements have been
16 accomplished. The issue is to -- to complete the
17 building at this point. So all the preliminary site
18 work preconstruction has been done.

19 THE COURT: Right, I think you said the basement
20 is.

21 THE WITNESS: Right. And like the -- the
22 environmental remediation on the site has been
23 accomplished, that -- those types of things.

24 Q And when you --

25 THE COURT: But not sidewalks and things, does
26 it? Have they done --

27 THE WITNESS: There's temporary --

1 THE COURT: -- maybe that's offsite.

2 THE WITNESS: -- sidewalks there. The sidewalks
3 would usually be the last thing that would come in.

4 THE COURT: Sure.

5 THE WITNESS: Right.

6 THE COURT: Right.

7 **BY ATTY. WILLIAMS:**

8 Q And when you said the building is vertical, just in
9 case the record is not clear on it, you -- you mean the --
10 the framing of the building is in place?

11 A Yes.

12 THE COURT: Is it closed?

13 THE WITNESS: Is it enclosed?

14 THE COURT: Yeah.

15 THE WITNESS: Yes, it is enclosed. There's
16 areas that need to be replaced in terms of the -- the
17 boarding that's -- that's been put up due to the --
18 the period of time that it's been exposed.

19 THE COURT: Okay. So there's a kind of a
20 temporary --

21 THE WITNESS: That's correct.

22 THE COURT: -- closure.

23 THE WITNESS: I think it's referred to as Tyvek.

24 THE COURT: Okay. So I mean, they haven't put
25 in the windows yet.

26 THE WITNESS: There's been a wrapper. There's
27 -- there's like a substructure in terms of the -- the

1 enclosure of the building that it's wrapped.

2 THE COURT: Right. And just roughly, what
3 percent of construction would you say is complete? I
4 mean, just ballpark.

5 THE WITNESS: Conservatively, I'd say about
6 thirty percent.

7 THE COURT: Wow, so there's quite a ways to go.

8 THE WITNESS: Yes.

9 THE COURT: Okay.

10 **BY ATTY. WILLIAMS:**

11 Q And with regard to the 90 days that you estimated to
12 amend the zoning approval and the LDA, can the zoning
13 approval be requested by the property owner simultaneously
14 with requesting an LDA amendment?

15 A Yes.

16 Q All right. And I'll just continue with that property
17 owner and that property and turn to the topic of Citibank
18 and its right of first refusal.

19 Do you recall that on cross examination Attorney
20 Rubin asked you about the LDA remedies available under
21 Section 19.3 against Poko for Phase I? So we'll start with
22 Poko for this purpose.

23 A I'm sorry, can you start over again, please?

24 Q Yep. He was asking you about the -- the remedies
25 that the Agency had under the LDA against Poko, and which
26 things the City had done or -- or not done. And I want to
27 refer you now, if you recall it, well, if I could provide it

1 to you, I'm not going to ask you exact terms -- but with
2 regard to the first amendment to the LDA, just, in general,
3 what did the Agency try to do to address Poko's defaults?

4 A Well, the -- the Agency tried to put the -- well,
5 first of all, let me clarify, it's not just the Agency, it's
6 public parties. Because whatever action is taken with
7 regards to the LDA, it's the Agency with the -- the Common
8 Council, i.e., the City of Norwalk.

9 Q Sure.

10 A So the concern relative to the first amendment was
11 ultimately to try and bring the project back into a timeline
12 for the completion of construction. The -- the public
13 parties had defaulted Poko, they were very concerned about
14 getting the project into construction in a reasonable
15 timeframe and advancing it towards closing and getting the
16 project into vertical construction.

17 THE COURT: When was the default issued?

18 THE WITNESS: I don't know that off the top of
19 my head. I -- I think there was a notice of default
20 that is, I'm not sure if it was an exhibit. I -- I
21 want to say, Your Honor, it was probably sometime in
22 2015.

23 THE COURT: Okay.

24 **BY ATTY. WILLIAMS:**

25 Q And would -- would it have been before the first
26 amendment to the LDA was -- was signed?

27 A Yes.

1 Q Okay.

2 A And -- and just to clarify that, there's been some
3 level of criticism relative to that action in terms of
4 setting forward those timelines.

5 But the -- the issue was that we were exceedingly
6 close to -- to -- or the project was exceedingly close to
7 closing. And the public parties didn't want to effectuate
8 further delay by obstructing the potential for the project
9 to -- to close.

10 THE COURT: What do you mean by close?

11 THE WITNESS: I'm sorry?

12 THE COURT: What do you mean by close?

13 THE WITNESS: Oh, they were closing on all of
14 the -- the requisite financing to advance into
15 construction --

16 THE COURT: I see.

17 THE WITNESS: -- at the point that we were
18 dealing with the default.

19 THE COURT: Okay.

20 Q And I believe you testified that Poko did not comply
21 with the amended deadlines, correct?

22 A For a period in time they were, actually, complying
23 until they weren't complying. And that, ultimately, their
24 noncompliance with the first amendment was due to the --
25 about a year into the project there -- there was determined
26 to be a gap of roughly ten million dollars associated with
27 the development of the project. And at that point, or

1 shortly thereafter, the bank started to shut down their
2 ability to draw on -- on further -- to do further draws on
3 the construction loan.

4 Q And what -- what was happening with Poko at that
5 point?

6 ATTY. RUBIN: Object to form.

7 Q What was --

8 THE COURT: Sustained.

9 Q What was going on -- what was going on with the
10 principals of Poko at the point that that was happening?

11 A Well, Ken Olson was exceedingly sick at that point,
12 and as I -- as I indicated, per the project, the project was
13 experiencing a significant gap in the construction budget.

14 Q Uh-huh. And what remedy did the Agency then discuss
15 with Citibank at about that point?

16 A The Agency had discussions with Citibank about the
17 bank coming in to -- to control of the site, and was
18 exploring a host of options with Citi, that included Citi,
19 actually, contemplating it becoming the redeveloper for a
20 period in time and other options.

21 Q Okay. Now --

22 THE COURT: Excuse me, just a second. I -- I
23 thought we'd made a distinction because Citi was the
24 lender it could go ahead and -- couldn't it complete
25 it without becoming -- quote, the redeveloper?

26 THE WITNESS: That's correct?

27 THE COURT: Okay. So then you're saying you

1 were talking to them about becoming the redeveloper?

2 THE WITNESS: As -- they would complete the
3 project --

4 THE COURT: In function.

5 THE WITNESS: -- as the developer.

6 THE COURT: Yeah, not --

7 THE WITNESS: Not as a --

8 THE COURT: -- as approved Redeveloper.

9 THE WITNESS: Right.

10 THE COURT: Not with a capital R.

11 THE WITNESS: For the LDA, that's correct.

12 THE COURT: Okay. All right.

13 **BY ATTY. WILLIAMS:**

14 Q And with regard to the Phase II and III properties,
15 Attorney Rubin asked you about Citibank's right of first
16 refusal, I believe, on your prior cross examination and then
17 it came up again here today. And you acknowledge that the
18 bank had the right to take a deed in lieu of foreclosure on
19 those properties as it did for Phase I, and that the bank
20 did not avail itself of that right as to the Phase II and
21 III properties, correct?

22 A Can you repeat that one more time for me?

23 Q The -- the bank took a deed in lieu of foreclosure on
24 the Phase I properties --

25 A Yes.

26 Q -- you acknowledge that the bank had the right to do
27 that on the Phase II and III properties, but did not do so?

1 (Pause)

2 Q Well, is that a fact?

3 A I -- No, I'm -- I'm not so certain of that. I -- The
4 -- the bank, to my knowledge, had no financial interest in
5 Phase II or Phase III properties. They only had an interest
6 in the Phase I properties. And the only interest I
7 understood that the bank had was through their deed in lieu
8 of foreclosure on the Phase I property; that they had some
9 ability relative to the right of first refusal on the
10 properties that were in Phase II and Phase III.

11 Q That is what I meant and I asked it incorrectly.

12 A Okay.

13 Q Thank you for clarifying.

14 A And maybe it was just my confusion.

15 Q They had a right to first refusal and did not
16 exercise it as to the Phase II --

17 A Okay.

18 Q -- and III properties.

19 A Thank you.

20 Q Is that right?

21 A That is correct.

22 Q All right. And to your knowledge, was Citibank
23 offered the chance to match the purchase offer by Wall
24 Street Opportunity Fund under its right of first refusal?

25 A They -- they were --

26 ATTY. RUBIN: Objection just in terms of
27 foundation.

1 ATTY. WILLIAMS: I just asked him if there's
2 foundation. I said does he know if they were
3 offered.

4 THE COURT: Well, he said there was the right of
5 first refusal on --

6 ATTY. RUBIN: Were they offered it. Okay.

7 THE COURT: -- Phase II and III.

8 ATTY. RUBIN: Okay. Okay.

9 THE COURT: And so the next question is did they
10 get the offer.

11 ATTY. RUBIN: Okay.

12 THE COURT: Okay.

13 A My understanding is that they were extended the
14 opportunity to respond to the offer.

15 (Pause)

16 THE COURT: Can we just -- Mr. Sheehan, could
17 you just elaborate on that? When you said -- because
18 I understand what your testimony is that Citibank
19 was, in fact, given the opportunity to exercise its
20 right of first refusal. With respect to what and
21 when, by whom?

22 THE WITNESS: Yes, with respect to the purchase
23 offer that came in from Wall Street Opportunity Fund
24 for the five parcels controlled by ILSR that were
25 subject to the LDA and that -- that opportunity to
26 respond, I believe, was provided by Rich Olson from
27 ILSR to Citibank.

1 And the third part of your question was?

2 THE COURT: I think we're in there. So -- well,
3 when?

4 THE WITNESS: It was prior to the execution or
5 the recording of the sale on the land records.

6 THE COURT: To Wall Street?

7 THE WITNESS: To Wall Street Opportunity Fund.

8 THE COURT: Were you aware of -- that this was
9 happening at the time?

10 THE WITNESS: That they were being provided
11 that?

12 THE COURT: Yeah.

13 THE WITNESS: Yes.

14 THE COURT: Okay. So let me just think about
15 this. All right. So it's Olson, which is Poko that
16 was giving the right of first refusal to the bank.

17 THE WITNESS: Yes.

18 THE COURT: Wall Street hadn't reared its head
19 yet.

20 THE WITNESS: Wall Street had made an offer
21 obviously, because that's what the bank was
22 responding to.

23 THE COURT: I see. The one -- that's right.
24 Right, that's what would trigger right of first
25 refusal.

26 THE WITNESS: Right.

27 THE COURT: All right. So then you were aware

1 of Wall Street's interest in purchasing the -- the
2 five parcels before they did.

3 THE WITNESS: Yes.

4 THE COURT: And when is this about? When did
5 you become aware --

6 THE WITNESS: I think it --

7 THE COURT: -- of all this?

8 THE WITNESS: I think there's previous exhibits
9 that, actually, go back to when Mr. Milligan was
10 releasing his interest to Nancy on Norwalk, I want to
11 say that that was, like, the middle of May.

12 THE COURT: Say this again. When Mr. Milligan
13 was releasing his interest what?

14 THE WITNESS: He was releasing his interest to
15 acquire the properties, he released that to the
16 media. And --

17 THE COURT: Oh.

18 THE WITNESS: -- Nancy on Norwalk did a couple
19 of stories on that sometime in the middle of May.

20 THE COURT: Okay. All right. Thank you.

21 THE WITNESS: Uh-huh.

22 **BY ATTY. WILLIAMS:**

23 Q I'm showing you what we've marked as Plaintiff's 33,
24 Mr. Sheehan, can you identify that document?

25 A Yes, this is a communication from -- and I might
26 butcher this name, Aviva Yarken (Phonetic) from Sidley
27 Austin, the law firm, to Mr. Thomas Katon, who is from

1 Susman, Duffy. Susman, Duffy, to my knowledge, was
2 representing ILSR and Sidley was representing Citibank. And
3 the subject is Wall Street Place Phase II Property.

4 Q And what's the date and time of the email?

5 A The date is Wednesday May, 30th, 2018 at 12:09 p.m.

6 Q So that's the day before Wall Street closed on the
7 purchase of the property, right?

8 A Yes.

9 Q And you said that's a letter from the lawyer
10 representing Citibank to the lawyer representing ILSR
11 owners.

12 A Yes.

13 Q And they're --

14 THE COURT: What are we looking at here?

15 ATTY. WILLIAMS: Pardon me?

16 THE COURT: What are we looking at?

17 ATTY. WILLIAMS: Plaintiff's Exhibit 33 for
18 identification.

19 THE COURT: Oh.

20 THE WITNESS: I think it's 37.

21 THE CLERK: It's 37.

22 ATTY. WILLIAMS: Sorry.

23 THE COURT: But it's for ID only?

24 ATTY. WILLIAMS: Yes.

25 THE COURT: Okay.

26 ATTY. WILLIAMS: And it's cc'd to a group of
27 people. This is just for identification only at the

1 moment.

2 THE COURT: And so -- well --

3 (Pause)

4 THE COURT: Well, I'm concerned about the Best
5 Evidence Rule, the document itself is not in evidence
6 and that then can preclude discussion about it.

7 ATTY. WILLIAMS: This is an email from one party
8 to another party and it states a potential claim,
9 Your Honor, with regard to the right of first refusal
10 and another agreement. And it's, I think it's --
11 it's important and material to our claims in this
12 action that it shows notice to the defendants, to the
13 Milligan defendants as well of that right of first
14 refusal.

15 And it helps explain the reasoning of Citibank
16 for why they didn't exercise their right of first
17 refusal.

18 ATTY. RUBIN: I'd like to be heard on it, of
19 course, I mean, for a host of reasons.

20 THE COURT: Go ahead.

21 ATTY. RUBIN: Initially, it's hearsay. It's a
22 letter from a lawyer to a lawyer, it's a letter from
23 Citibank's lawyer. Citibank is not here. Citibank
24 could very well be here and so it's a nonparty. And
25 it's -- it's the definition of hearsay.

26 Two, the -- the Court has -- two would be the
27 Best Evidence Rule as well, because it is -- there's

1 no -- the testimony is is that the right of first
2 refusal was made, and to the extent it was, there was
3 -- there's a document that reflects the obligation to
4 make that, that's fine, that should come in.

5 And to the extent there are documents relating
6 to the issue of the right of first refusal, they
7 should come in through the proper parties.

8 THE COURT: It was a -- I'm sorry, it was the
9 lawyer -- it was a letter between Citibank's lawyer
10 and who?

11 ATTY. WILLIAMS: It was -- well, I -- I was in
12 the middle of doing the identification, Your Honor.
13 But the To is to the lawyer, the lawyer for ILSR
14 owners, Thomas Katon. The cc is to a whole lot of
15 additional people that I wanted to establish before I
16 even got to making an offer. So I would like to do
17 that or I can argue right now the points that
18 Attorney Rubin made before we do that if the Court
19 feels it necessary.

20 THE COURT: No, who were the cc's?

21 ATTY. WILLIAMS: So and I'm going to ask
22 Attorney -- excuse me, I'm going to ask Mr. Sheehan,
23 if necessary, to clarify who the people -- who the
24 people are depending on whether or not the names are
25 familiar.

26 **BY ATTY. WILLIAMS:**

27 Q The first cc, Mr. Sheehan, is Jeremy Johnson, can you

1 state who that is in relation to this matter?

2 A Yes, he is the principal at Citibank that's been
3 dealing with this issue.

4 Q The next one is an email address that says
5 RichO@Pokomgt.com --

6 A That's --

7 Q -- who's that?

8 A -- Rich Olson, ILSR.

9 Q And I think it's been well established in this case,
10 ARD@DeChelloLaw.com is Attorney Anthony DeChello who
11 represents CC Rivington, right?

12 A Yes.

13 Q Candace@AttorneyFay.com, is that Attorney Candace
14 Fay?

15 A Yes --

16 Q Who does she --

17 A -- to my knowledge.

18 Q Who does she represent?

19 A I believe that she was representing Wall Street
20 Opportunity Fund.

21 Q Okay. PDavis@FirstAm --

22 THE COURT: Oh. Okay. All right. Leave it,
23 that's a big one. So there's a cc to Wall Street's
24 lawyer?

25 Q Is that right, Mr. Sheehan?

26 A I'm sorry, what?

27 Q There's --

1 A Yes, Candace Fay, to my knowledge, was representing
2 Wall Street Opportunity Fund.

3 Q The next cc is PDavis@FirstAm.com, do you know who
4 that is?

5 A I -- I'm assuming that that's the title insurance
6 company.

7 Q Polly Davis at First American Title Insurance
8 Company?

9 A That's my assumption.

10 Q Todd McClutchy, who's that?

11 A JHM.

12 Q That's the consultant to Citibank?

13 A Correct.

14 Q Marc --

15 THE COURT: Todd --

16 A -- Grenier?

17 THE COURT: You said Todd?

18 THE WITNESS: Yes, Todd is John McClutchy's son.

19 THE COURT: I see.

20 Q Marc Grenier?

21 A Marc Grenier -- Marc Grenier is Agency counsel.

22 Q Diane Beltz-Jacobson?

23 A Assistant Corporation Counsel for the City of
24 Norwalk.

25 Q Harry Rilling?

26 A Mayor of the City of Norwalk.

27 Q Laoise King?

1 A Chief of Staff to the Mayor.

2 Q James Wade, are you familiar with him?

3 A I am not.

4 Q At RC dot com, is that Attorney Jim Wade of Robinson
5 Cole?

6 A I don't know that to --

7 Q Okay.

8 A I don't know that one.

9 Q John McClutchy?

10 A John McClutchy is JHM Principal.

11 Q Mario Coppola?

12 A Corporation Counsel?

13 Q And Tim Sheehan, we're familiar with him?

14 A We are, he's the Executive Director or the
15 Redevelopment Agency.

16 Q And Deborah Brancato, it says at Carmodylaw.com?

17 A Yes, that would be counsel for JHN.

18 Q Okay. So those -- are those all the people cc'd on
19 it?

20 A Yes.

21 ATTY. WILLIAMS: So Your Honor, first of all,
22 this document is not hearsay. And I -- I'd argue
23 it's not hearsay because we're not offering it for
24 the truth of the matter asserted.

25 I'd direct the Court to the commentary --

26 THE COURT: No, it's okay. I get you.

27 ATTY. WILLIAMS: Okay.

1 THE COURT: But this was marked ID.

2 ATTY. WILLIAMS: Right.

3 THE COURT: Who -- I don't understand that if
4 Mr. -- if Mr. Sheehan was cc'd he would have seen it,
5 no?

6 ATTY. WILLIAMS: He has seen it. I asked him to
7 identify it and -- and he did. And then I was
8 beginning to identify the parties to it so that I
9 could offer it and make an argument, and I believe
10 that's when you and Attorney Rubin started joining a
11 discussion.

12 THE COURT: Oh, I'm sorry. I thought this was
13 -- excuse me -- I thought this was a prior document
14 we -- I'm getting confused with a prior document we
15 didn't let in because he hadn't seen it.

16 ATTY. WILLIAMS: No, this one's --

17 THE COURT: You're just trying to introduce this
18 document?

19 ATTY. WILLIAMS: Exactly.

20 THE COURT: All right. Okay.

21 ATTY. WILLIAMS: This is new, we haven't
22 discussed it before.

23 THE COURT: Right. Okay. Fine, I get it.

24 ATTY. WILLIAMS: Okay. So I -- I claim it's not
25 hearsay because it provides notice to the parties.
26 And it provides a statement of a potential claim by
27 Citibank.

1 It references other agreements, but it's on its
2 own stating the position of the bank to all the
3 parties involved, including Wall Street Opportunity
4 Fund, including defendant ILSR owners about whether
5 it views the offer being made as a valid offer that
6 needs to be responded to.

7 So therefore, under Section 8-1 of the Code of
8 Evidence where hearsay is defined in Subdivision 3,
9 it's by definition, not hearsay because it's a
10 legally operative document and it's not being offered
11 for its truth.

12 THE COURT: Go ahead.

13 ATTY. RUBIN: It's the definition of hearsay.
14 It's an email from a lawyer from a nonparty,
15 Citibank. I --- I understand that that statement is
16 that if you assume that the lawyer is the agent of
17 Citibank then it's a statement being offered to prove
18 the truth of what's in here relative to a statement
19 of Citibank.

20 There's the idea that it has in some -- that
21 it's like has some independent legal significance or
22 that, for some reason, it's not what it purports to
23 be, which is an out of court statement used for the
24 purposes of proving the truth asserted in it is
25 nonsense. That's exactly what it is.

26 It's -- it's a statement from Citibank's lawyer
27 to parties. And it doesn't matter who receives it.

1 The idea -- hearsay is not governed by who receives
2 it, you don't turn hearsay into non-hearsay because
3 somebody has received it. The idea is that the
4 statement, itself, is made by a nonparty and it's
5 being used to prove the truth of the statement.

6 ATTY. WILLIAMS: It --

7 THE COURT: The only point about who received it
8 is can it be authenticated.

9 ATTY. WILLIAMS: And is it notice?

10 THE COURT: Yeah, but that's -- but that's a
11 preliminary, that doesn't deal with hearsay, I
12 think --

13 ATTY. RUBIN: It has nothing to do with hearsay.

14 ATTY. WILLIAMS: Excuse -- excuse me, if I may,
15 Your Honor. It -- I would contend that it does
16 because, as I said, we're offering it as notice to
17 the Milligan defendants. That's what it -- that's
18 what it provides. I'm not claiming it for its truth.

19 So when Attorney Rubin just argued is exactly
20 incorrect under the Hearsay Rule.

21 As the commentary says --

22 THE COURT: Where are you looking?

23 ATTY. WILLIAMS: Sorry, I'm in the commentary to
24 8-1 of the Code of Evidence, Subdivision 3, it's on
25 page 385 of the current 2019 book, Your Honor.

26 And it says there, the purpose for which the
27 statement is offered is crucial if it is offered for

1 a purpose other than to establish the truth of the
2 matter asserted, the statement is not hearsay.

3 So by definition, this is not hearsay. And it
4 does matter who received it because it's notice to
5 the Milligan defendants of the right of first refusal
6 which question, actually, this came up a little while
7 ago here in this courtroom as to whether or not the
8 right of first refusal had been recorded on the land
9 records, and therefore, whether the Milligan
10 defendants knew about it.

11 We're making equitable claims in this case under
12 CUTPA and for unjust enrichment, and what the parties
13 knew before they entered into these transactions is
14 highly relevant.

15 ATTY. RUBIN: Your Honor, it also references
16 other documents that -- it's not the full document,
17 it's just -- it's a partial document.

18 ATTY. WILLIAMS: But that's -- this is not an
19 attempt for it to be proving the contents of another
20 document.

21 ATTY. RUBIN: Right. Well, see this is the
22 point, this is the inherent conflict of what they're
23 arguing. They are saying that it's not hearsay
24 because it's a legal document that has independent
25 legal significance for the purposes of providing
26 notice. And -- Okay. So if that takes it out of
27 hearsay, then they cannot offer it for the purpose

1 that they're trying to offer it for without it being
2 the complete document.

3 If it's a partial document then it cannot be
4 offered for the purposes they're trying to offer it.
5 So --

6 THE COURT: What's it -- what's it missing?

7 ATTY. RUBIN: I think Attorney Williams
8 testified that it -- that it wasn't complete.

9 THE COURT: No, I'm just --

10 ATTY. WILLIAMS: No, I didn't.

11 THE COURT: -- asking what's it missing?

12 ATTY. RUBIN: It references other documents that
13 are not in evidence.

14 THE COURT: Such as?

15 ATTY. RUBIN: The purchase agreement that we
16 don't have a copy of.

17 ATTY. WILLIAMS: The purchase agreement is in
18 evidence, it's referring to the Wall Street Purchase
19 Agreement that was provided to Citibank as the offer
20 that it had --

21 ATTY. RUBIN: Okay.

22 ATTY. WILLIAMS: -- the right to match.

23 THE COURT: Okay. So that one's okay.

24 ATTY. RUBIN: Okay. The right of -- they're --
25 this purports to involve the right of first refusal.
26 We don't' -- there is no right of first refusal. The
27 Court has inquired about the right of first refusal.

1 That's why the Court's initial response was -- if
2 this is purporting to be a formal notice regarding
3 the right of first refusal all it does is underscore
4 the significance of first having that right of first
5 refusal before the Court. Whether it's in the
6 context of a settlement agreement, whether it's in
7 the context of a deed, how -- where is the foundation
8 for a document relating to notice about a right of
9 first refusal? How can that be considered in the
10 absence of the document that it purports to -- to
11 answer.

12 THE COURT: It wasn't the formal notice that I
13 understand that you -- we are trying to make an
14 argument, it was lack of knowledge. And I think a
15 letter to a parties' lawyer discussing the right of
16 first refusal establishes knowledge.

17 ATTY. RUBIN: It's not a question -- no, I'm --
18 maybe I'm not articulating properly. Allow me. The
19 Court asked -- I said it's not a complete document,
20 they're saying it's not hearsay because it's --

21 THE COURT: No, you said it's not a complete
22 document, we dealt with that.

23 ATTY. RUBIN: Okay.

24 THE COURT: Because you said you're missing the
25 contract --

26 ATTY. RUBIN: You're missing --

27 THE COURT: It's his contract --

1 ATTY. RUBIN: -- the context of it.

2 THE COURT: -- that's in.

3 ATTY. RUBIN: Their purport -- the Court has --

4 THE COURT: We have that in evidence, so forget
5 that. Go on, I don't accept that part.

6 ATTY. RUBIN: The Court has indicated --

7 THE COURT: What's next?

8 ATTY. RUBIN: The Court has indicated that it
9 wants to see a copy of the right of first refusal.
10 The foundation for there being a right of first
11 refusal, whether it's in a settlement agreement,
12 whether it's on the land records, that's not before
13 the Court.

14 So a document that purports to provide notice in
15 connection with a document that is not currently
16 before the Court --

17 THE COURT: Yes, but we have -- go on, I don't
18 accept that, we have testimony about the existence of
19 the right of first refusal.

20 ATTY. RUBIN: How can there be -- how can there
21 be a document that purports to provide legal notice
22 relative to the -- to denying or accepting the right
23 of first refusal when the right -- when the terms of
24 the right of first refusal are not before the Court?

25 THE COURT: It's not relevant. Your contention
26 was there was no knowledge on the part of your client
27 of a right of first refusal.

1 ATTY. RUBIN: No, it's not, never.

2 THE COURT: And this document addressed it.

3 ATTY. RUBIN: My client gave him the right of
4 first refusal. We -- our position is that --

5 THE COURT: No --

6 ATTY. RUBIN: -- a right of --

7 THE COURT: No, that's not what you said.

8 Anyway, keep going.

9 ATTY. RUBIN: Wait --

10 THE COURT: Anything else?

11 ATTY. RUBIN: -- then I misspoke.

12 THE COURT: No, you did not. You said it wasn't
13 on the land records, do you recall?

14 ATTY. RUBIN: No, no, no, that --

15 THE COURT: Yes, you did. Yes, you did.

16 ATTY. RUBIN: I did, but the Court is drawing an
17 inference from that that I did not -- my client
18 absolutely gave Citibank a right of first refusal.
19 He complied with that, there's no question about
20 that.

21 THE COURT: Well, then what was that colloquy
22 all about, it's not on the land records?

23 ATTY. RUBIN: Because to the extent my --

24 THE COURT: What was the point of that?

25 ATTY. RUBIN: I will explain it.

26 THE COURT: Go ahead.

27 ATTY. RUBIN: To the extent my client purchased

1 these properties, he purchased them subject to his
2 understanding of the facts as they existed based on
3 what was on the land records. To the extent --

4 THE COURT: Nonsense. You said he had knowledge
5 of other things beyond the land records, so you had
6 to see how you could maintain that.

7 ATTY. RUBIN: They never shared the settlement
8 agreement with him, so the right of first refusal was
9 provided, but it was provided without knowledge of
10 what the terms of the right of first refusal were.
11 It was provided -- we still don't have the -- what
12 the actual right of first refusal requires from a
13 document standpoint.

14 How can a document come in that purports to
15 relate to whether -- to notice from a third party as
16 to whether they accept notice when the Court doesn't
17 have the underlying document in front of it?

18 THE COURT: There's nothing about accepting
19 notice, that's not required. What we said was
20 knowledge. And I will allow it for the limited
21 purpose of establishing that there was -- there was
22 some kind of notification of the existence of -- of a
23 right of first refusal --

24 ATTY. RUBIN: I don't have a problem with that.

25 THE COURT: -- by the bank on -- on those
26 properties.

27 ATTY. WILLIAMS: Very good, Your Honor.

1 THE COURT: Okay.

2 ATTY. RUBIN: So it cannot be used for any other
3 purpose other than knowledge.

4 THE COURT: We'll see.

5 THE COURT: Okay. Well, that's important
6 because that's my objection. The knowledge is fine.
7 We stipulate that he had knowledge, he provided the
8 (inaudible).

9 THE COURT: Okay.

10 ATTY. WILLIAMS: Thank you. So it's a full
11 exhibit with the Court's expression of the purpose.

12 THE COURT: It's, right, it's a limited
13 admission.

14 ATTY. WILLIAMS: Okay. Would you like a bench
15 copy, Your Honor?

16 THE COURT: Yes.

17 (Pause)

18 THE COURT: So Sidley was representing the bank?

19 ATTY. WILLIAMS: Yes.

20 THE COURT: Okay.

21 (Pause)

22 THE COURT: Okay. Thank you.

23 ATTY. WILLIAMS: So and as you can see, Your
24 Honor, Attorney Yakren says we've received your
25 purchase and sale agreement. And the second
26 paragraph says while you've delivered a copy, the PSA
27 is not a bona fide -- it's not with a bona fide

1 purchaser for value.

2 ATTY. RUBIN: See, Your Honor, this was the
3 whole point, the documents not even in for that
4 point.

5 THE COURT: Yeah, I -- I agree.

6 ATTY. WILLIAMS: It's --

7 THE COURT: Objection sustained.

8 ATTY. RUBIN: Thank you, Your Honor.

9 ATTY. WILLIAMS: Well, I'm publishing the parts
10 that I believe are relevant to the purpose for which
11 the Court allowed it into evidence. May I do that?
12 Because then I wish to ask Mr. Sheehan a follow-up
13 question on it.

14 THE COURT: Yeah, I know. Well, I guess if
15 necessary to explain the document, because I said it
16 could come in to show, you know, an awareness on the
17 part of Wall Street and the question about what, so.
18 All right.

19 **BY ATTY. RUBIN:**

20 Q At the end of the second paragraph it -- it states
21 the bank's position that the Wall Street Purchase and Sale
22 Agreement is not with a bona fide purchaser for value. It
23 then provides, in the third paragraph, that the property is
24 subject to the LDA, that the LDA provides for reentry
25 rights.

26 ATTY. RUBIN: See, object. This has nothing to
27 do with notice. This was just -- this was the --

1 this was the purposes of my objection, Your Honor.
2 What -- what, with all due respect, I -- there's --
3 there is a document that was introduced purportedly
4 for a reason. Once a document's in evidence it can
5 be used for any purpose. And I objected to it being
6 used for a purpose other than what the initial
7 argument was as to why it was admissible. The Court
8 sustained that objection, at least, in part. And now
9 Attorney Williams is trying to use it for the real
10 reason that he wanted it in --

11 THE COURT: Right --

12 ATTY. RUBIN: -- in the first place.

13 THE COURT: -- to, basically, show what the
14 bank's position is.

15 ATTY. RUBIN: Correct, which is the truth of the
16 matter asserted which you can get if you call
17 Citibank to testify.

18 ATTY. WILLIAMS: It's not for the truth of the
19 matter asserted, it's for notice to the Milligan
20 defendants.

21 And recall, Your Honor, Attorney Rubin opened
22 the door to the whole thing because of Mr. Sheehan's
23 cross examination back in December. He went through
24 the litany of things that he thinks Citibank didn't
25 do, Poko didn't do, the Agency didn't do that allowed
26 the project to be in the state that it's in.

27 And one of the lines of inquiry that the

1 Milligan defendants opened up and pursued is a line
2 of attack saying Citibank could have done something,
3 they didn't exercise their right of refusal, and it
4 paints a misleading impression.

5 And I think we should have the right to, at
6 least, publish to the Court the parts that we think
7 are relevant as to what happened and what was said to
8 the Milligan defendants. Because that notice to them
9 is very relevant to our claims in this case.

10 THE COURT: Let -- let me just suggest this.
11 The document is in for a very limited purpose. This
12 does not mean you can't ask Mr. Sheehan what he
13 understood the bank's position to be independent of
14 the document.

15 ATTY. WILLIAMS: Okay.

16 THE COURT: All right. This -- but this is
17 just, you know, this is recollection, if he had an
18 understanding I'll allow that.

19 But I think it's wrong, I -- you know, you can't
20 read off the document. I mean, I -- I really think
21 we limited that substantially. So I'm going to
22 sustain the objection.

23 ATTY. RUBIN: Thank you.

24 Q Did -- did you understand what the bank was
25 communicating to all the parties copied on this email when
26 you read it, Mr. Sheehan?

27 ATTY. RUBIN: Objection.

1 THE COURT: I would back off it. I would say
2 what was the bank's position with respect to whether
3 the right of first refusal was triggered, or however
4 you want to say it.

5 **BY ATTY. WILLIAMS:**

6 Q What did you understand to be the bank's position in
7 response to being offered that right of first refusal?

8 A They didn't consider it an adequate offer of the
9 right of first refusal.

10 Q Because?

11 A Because of a variety of issues, most notably, it
12 being an unconditioned sale.

13 Q Could you say the last part again?

14 A Most notably because it was an unconditioned sale?

15 Q You mean not -- not conditioned upon consent of the
16 Agency?

17 A That's correct.

18 Q Thank you.

19 A And all of the approvals associated with the LDA.

20 Q All right. Let's turn now to another of the litany
21 that was brought out on cross examination by --

22 ATTY. CALLAHAN: Your Honor, may I have a quick
23 moment?

24 THE COURT: With him?

25 ATTY. CALLAHAN: Yes.

26 THE COURT: Be my guest.

27 (Pause)

1 ATTY. CALLAHAN: Thank you, Your Honor.

2 THE COURT: Okay.

3 ATTY. WILLIAMS: Okay.

4 THE WITNESS: Thank you.

5 THE COURT: Well, just a minute. I'm sorry, I
6 was distracted, you just asked to speak to a witness
7 on the stand?

8 ATTY. CALLAHAN: No, I just asked to speak
9 with --

10 THE COURT: Oh, you spoke to him.

11 Oh, you gave him water, I -- Okay. Fine. Let's
12 go. We're all right. Okay.

13 ATTY. CALLAHAN: I don't want any trouble, Your
14 Honor.

15 THE COURT: No, it's fine.

16 **BY ATTY. WILLIAMS:**

17 Q Turning to a next topic which is another brought up
18 by Attorney Rubin with you on cross examination, Mr.
19 Sheehan, and that has to do with pointing out that the
20 Agency has not exercised its right of reentry on the Leonard
21 Street parking lot.

22 And when Attorney Rubin brought that up and pointed
23 out that the Agency has not, to date, exercised its right of
24 reentry of 23 Isaac Street, you testified, I believe, that
25 you -- the Agency had some concerns with exercising that
26 right. Do you recall that testimony?

27 A That's correct.

1 Q What concerns does the Agency have with exercising
2 the right of reentry on that parcel?

3 A The concerns that we had at the outset were the
4 appearance that there was additional debt that was put on to
5 the -- the property.

6 Secondly, obviously, our thought process with that
7 was that the property with the additional debt or the
8 appearance of the additional debt was way beyond what the --
9 the value of the property, ultimately, would be.

10 Q And we heard earlier, and we have in evidence, the
11 collateral assignment of the five point eight million dollar
12 CC Rivington mortgage by Rivington to Komi Ventures, right?

13 A Yes.

14 Q And I believe you testified that that assignment,
15 along with the five point two million dollars in mortgage
16 debt added by Wall Street Opportunity Fund gave the
17 appearance of eleven million dollars in secured debt on the
18 property, is that right?

19 A That's correct.

20 Q And what concerns did that apparent amount of debt
21 cause the Agency with regard to reentering the property?

22 A As I said, that was an exceedingly -- it was over the
23 -- the value of what the property could yield.

24 Q Well, what -- what was your concern with regard to
25 what risk that debt posed to the Agency?

26 A That you would be assuming it, you'd be subject to
27 it.

1 THE COURT: Can you just -- let me just make
2 sure I -- let's just go through these various
3 mortgages and assignments for a minute.

4 THE WITNESS: Sure.

5 THE COURT: Okay.

6 THE WITNESS: Sure.

7 THE COURT: So there was an assignment from
8 Rivington to Komi, right?

9 THE WITNESS: Yes.

10 THE COURT: And that was how much, that
11 mortgage?

12 THE WITNESS: That was -- Rivington to Komi was
13 the -- the five -- we, actually, have these in
14 exhibits, right?

15 ATTY. WILLIAMS: Right, which one were you
16 asking about? I'm sorry.

17 THE WITNESS: Rivington to Komi.

18 ATTY. WILLIAMS: That's Exhibit 22, can I just
19 show him a copy of it, Your Honor?

20 THE COURT: Yeah.

21 ATTY. WILLIAMS: It's a clean -- our clean copy
22 of it.

23 THE WITNESS: So Rivington to Komi was five
24 point eight million dollars.

25 THE COURT: Okay.

26 THE WITNESS: Do you want to see that, Your
27 Honor?

1 THE COURT: No, that's fine. And was Rivington,
2 was that an approved lender? It was, was it?

3 THE WITNESS: CC -- no, MC Credit --

4 THE COURT: Yeah.

5 THE WITNESS: -- was the approved lender who
6 then ultimately did the transfer to CC Rivington
7 without authorization.

8 THE COURT: Okay. Right, so then you have that
9 one. And then what was the other mortgage that
10 concerned you?

11 THE WITNESS: And then there was Komi had a
12 mortgage that was put on to the property, as well,
13 then we have that.

14 THE COURT: And that was how much?

15 THE WITNESS: I -- I -- the exhibit? I think it
16 was like five point one, but.

17 THE COURT: Yeah, I think so too.

18 (Pause)

19 ATTY. WILLIAMS: Exhibit 23.

20 THE COURT: Okay. So you're looking at it
21 and it's --

22 THE WITNESS: Five point two, Your Honor.

23 THE COURT: Okay. And so it seems that, you
24 know, you've got this mortgage that Rivington got
25 ahold of and transferred to Komi. And then Komi put
26 another mortgage on in a different amount. Okay.

27 Now, where did the Participation Agreement come

1 in?

2 ATTY. WILLIAMS: Where about to -- where about
3 to turn to that, Your Honor.

4 THE COURT: Okay. All right.

5 ATTY. WILLIAMS: Just one quick, one quick
6 thing.

7 **BY ATTY. WILLIAMS:**

8 Q Do you have -- do you have an understanding of
9 whether MC Credit and CC Rivington are affiliated with the
10 same ownership?

11 A I don't know that for certain.

12 Q Okay. That's fine. And what I just showed you,
13 Exhibit 23, that's the five point two million dollar
14 mortgage by Wall Street to Komi, correct?

15 A That's correct.

16 Q And then we have five of those deeds within that
17 exhibit, right?

18 THE COURT: Are we getting out of the scope of
19 cross?

20 ATTY. WILLIAMS: No, Your Honor.

21 THE COURT: Why not?

22 ATTY. WILLIAMS: Because he was asked a lot
23 about why the -- that the Agency hadn't exercised the
24 right of reentry and that's what I'm --

25 THE COURT: Okay.

26 ATTY. WILLIAMS: -- exploring right now.

27 THE COURT: All right.

1 A Yes.

2 **BY ATTY. WILLIAMS:**

3 Q So and in each deed for each of the five properties
4 bought by Wall Street say that five point two million
5 dollars in debt was placed on them, right?

6 A That's correct.

7 Q Now -- Okay. So you testified why the HC had a
8 concern with eleven million dollars in apparent debt on 23
9 Isaac Street. And since you last testified in December,
10 what has the Agency learned about the status of the five
11 point eight million dollar CC Rivington mortgage?

12 A That -- that that has been discharged.

13 Q And Mr. Rubin asked you about that here in this
14 courtroom this week, right?

15 A Yes.

16 THE COURT: That the -- the five point eight was
17 discharged. Okay.

18 (Pause)

19 Q I'm showing you Plaintiff's Exhibit 38 for ID, can
20 you identify that, Mr. Sheehan?

21 A It's a release of mortgage, assignment of leases, and
22 financing statement from CC Rivington.

23 ATTY. WILLIAMS: I'll offer it.

24 ATTY. RUBIN: No objection.

25 THE COURT: All right. It may come in as full.

26 ATTY. RUBIN: What number is that? 38?

27 ATTY. WILLIAMS: Yes.

1 (Pause)

2 ATTY. WILLIAMS: Bench copy, Your Honor.

3 THE COURT: Yeah. Thank you.

4 ATTY. WILLIAMS: Sure.

5 **BY ATTY. WILLIAMS:**

6 Q All right. And what's the date of the document?

7 A The date that it's stamped is -- looks like --

8 Q Well, I can -- I'm sorry, can you see in the middle
9 of the page it says --

10 A It says --

11 Q -- in witness whereof?

12 A -- 30th of May, 2018.

13 Q And what does this, as you read it, what does this
14 release purport to do?

15 ATTY. RUBIN: Objection, Your Honor.

16 THE COURT: I'll allow -- I'll allow it, I -- I
17 would appreciate the help.

18 A My understanding is that it's releasing that -- that
19 mortgage that we thought -- that I thought was previously
20 assigned to the property.

21 Q In fact, on the list of things being released, A, B
22 and C, is the first item -- the first document with the A in
23 front of it, is that the five point million dollar mortgage
24 that was originally loaned by MC Credit and assigned to CC
25 Rivington?

26 A Yes.

27 Q Was this release recorded on the land records to your

1 knowledge?

2 A Not to my knowledge.

3 Q Is that typical in your experience?

4 A No.

5 Q Why not?

6 A Usually the -- the discharge of a mortgage you want
7 to have publically noticed.

8 Q Sure, and why is that?

9 A So that you know that the property -- it's -- it's
10 documented in the public land records that there's not that
11 additional debt that's on the property.

12 Q Now, prior to January 4th, 2019 when this release was
13 produced by the Milligan defendants in response to our
14 subpoena and under court order, had any representative of
15 any of the defendants in this case ever told you that that
16 the five point eight million dollars CC Rivington mortgage
17 had been released?

18 A I had never been told that.

19 Q On January 4th the Milligan defendants also produced
20 the Participation Agreement that's referenced in the
21 collateral assignment by CC Rivington, right?

22 A Yes.

23 THE COURT: I'm sorry, where does it refer to
24 the --

25 ATTY. WILLIAMS: In A, Your Honor.

26 THE COURT: -- Participation Agreement?

27 ATTY. WILLIAMS: Oh, oh, the Participation

1 Agreement is referenced in the collateral assignments
2 that was a prior --

3 THE COURT: That's something else. Okay.

4 ATTY. WILLIAMS: I believe that's --

5 THE WITNESS: It's --

6 THE CLERK: 22.

7 THE WITNESS: 22.

8 ATTY. WILLIAMS: Exhibit 22 is the collateral
9 assignment --

10 THE COURT: Okay.

11 ATTY. WILLIAMS: -- and it references the
12 Participation Agreement.

13 (Pause)

14 **BY ATTY. WILLIAMS:**

15 Q I'm showing you Exhibit 39, is that the Participation
16 Agreement that we were provided in January?

17 A Yes.

18 ATTY. WILLIAMS: I'll offer it.

19 ATTY. RUBIN: Is it the entire one with the
20 exhibit?

21 ATTY. WILLIAMS: It wasn't given to me with an
22 exhibit.

23 ATTY. RUBIN: Of course, it was, Jim, there's an
24 Exhibit A, it's the collateral assignment.

25 ATTY. WILLIAMS: Okay. Yeah, it is.

26 ATTY. RUBIN: Okay.

27 THE COURT: Any objection?

1 ATTY. RUBIN: No, objection, Your Honor.

2 THE COURT: All right. Exhibit 39 comes in as
3 full.

4 And, Mr. Williams, I'll just note that we're
5 about two or three minutes away from lunch. It might
6 be wise just to go off for now and pick it up.

7 ATTY. WILLIAMS: Fine with me.

8 THE COURT: Okay. All right.

9 Okay. Let's stand in recess for lunch.

10 (Recess)

11 (Back in session)

12 THE COURT: Hi, good afternoon.

13 ATTY. GOMES: Good afternoon, Your Honor.

14 ATTY. WILLIAMS: Good afternoon, Your Honor.

15 THE COURT: Please be seated.

16 ATTY. WILLIAMS: That was a witness mix up right
17 there.

18 (Pause)

19 ATTY. RUBIN: Sorry, Your Honor.

20 (Pause)

21 THE COURT: All right. So we -- the parties
22 have agreed, and I agree, that we're going to take
23 the next witness out of order. We're still not
24 finished with Mr. Sheehan's redirect. But that said,
25 Mr. Rubin, why don't you call your witness.

26 ATTY. RUBIN: Mario Coppola.

27 THE COURT: Okay. Sir, please come up here.

1 Hi, if you would please face the clerk and raise your
2 right hand.

3 THE CLERK: Do you solemnly swear or solemnly
4 and sincerely affirm, as the case may be, that the
5 evidence you shall give concerning this case is the
6 truth, the whole truth and nothing but the truth, so
7 help you God or upon penalty of perjury?

8 THE WITNESS: Yes.

9 THE CLERK: Please state your name, spell your
10 last name, and state your address for the record.

11 THE WITNESS: Mario F. Coppola, C-O-P-P-O-L-A.
12 239 Wilson Road, Orange, Connecticut.

13 ATTY. RUBIN: Your Honor, just for clarity of
14 record, who is going to be defending this?

15 ATTY. WILLIAMS: That will be me.

16 THE COURT: Okay.

17

1 **M A R I O C O P P O L A**, after having been duly sworn, was
2 examined and testified as follows:

3 **DIRECT EXAMINATION BY ATTY. RUBIN:**

4 Q Good afternoon, Mr. Coppola.

5 A Good afternoon.

6 Q What do you do for a living?

7 A I'm an attorney.

8 Q And for how long have you been an attorney?

9 A Since 2004.

10 Q Where do you practice?

11 A I'm a partner at the law firm of Berchem Moses in
12 Westport and Milford. I am also employed directly by the
13 City of Norwalk as Corporation Counsel.

14 Q In connection with your private practice, what type
15 of law, generally, do you practice?

16 A I have a variety of clients, but I mostly focus on
17 clients with municipal matters ranging from property tax
18 assessment appeals to land use matters. I regularly do work
19 for other municipalities such as the Towns of Westport,
20 Weston, Wilton, New Canaan and Trumbull.

21 Q And how long have you been Corporation Counsel?

22 A I believe around five years.

23 Q And can you describe, generally, what your job
24 description or your job duties are as Corporation Counsel?

25 A As Corporation Counsel I am the head of the Law
26 Department, I'm a part time employee. The rest of the
27 attorneys in the Law Department are fulltime attorneys. So

1 a majority of what I do is management of the office.

2 Q And so you have a staff?

3 A Yes, there are, let me just count, for one moment,
4 the attorneys in the office. There are five fulltime
5 attorneys and there are three fulltime staff members in the
6 Law Department.

7 Q And who do you report to?

8 A I only report to the mayor.

9 Q And the mayor appointed you?

10 A Yes.

11 Q Mayor swore you in?

12 A I believe the City Clerk swore me in, but I was sworn
13 in when I was appointed by the mayor.

14 Q Have you had any discussions -- well, are you aware
15 of whether Mr. Milligan has had attorneys in connection with
16 any involvement regarding Parcel 2A? Do you know what
17 partial 2A is?

18 A I'm not sure exactly which addresses are associated
19 with Parcel 2A.

20 Q If I tell you Phase I, Phase II, Phase III of the
21 Redevelopment plan that is governed by the LDA that we're
22 here for, will you understand -- take that to understand
23 that Parcel 2A -- what properties are involved with Parcel
24 2A?

25 A I don't know if I could recollect the exact addresses
26 of all the parcels that are considered the Phase II
27 properties, but I'm aware that there are three phases to the

1 project, and I'm aware where the Phase II properties exist
2 on the subject properties.

3 Q Are you aware of whether Mr. Milligan was represented
4 in connection with his potential purchase of five lots
5 within the Redevelopment plan prior to his purchase?

6 A Yes.

7 Q Okay. Who was his attorney?

8 A I had not spoken to his attorney but I saw a Purchase
9 and Sale Agreement where I believe it provided that Candace
10 Fay was his attorney.

11 Q Were you aware that -- you were aware of the -- that
12 Mr. Milligan was considering purchasing those properties
13 before he actually purchased them, before the deal closed,
14 correct?

15 A We met with him the day that he closed, I don't know
16 if we -- if I had spoken with Mr. Milligan prior to that. I
17 know prior to that date I was told that Mr. Milligan had an
18 interest in purchasing the properties.

19 Q Right, you were clearly aware that he had an interest
20 in purchasing the properties at that meeting.

21 A Yes.

22 Q Were you aware that he had counsel at that meeting?
23 That was a confusing -- Were you aware when that meeting
24 occurred that Mr. Milligan had counsel in connection with
25 his prospective purchase of those five parcels?

26 THE COURT: Well, not that the -- not that the
27 counsel attended, but that he had a lawyer --

1 ATTY. RUBIN: Correct.

2 THE COURT: -- advising him.

3 ATTY. RUBIN: At the time, correct.

4 A I don't know if he had an attorney advising him at
5 the time, I do remember seeing a Purchase and Sale Agreement
6 where it was indicated that Candace Fay was his attorney.

7 Q Did you have that potential -- did you have that
8 Purchase and Sale Agreement prior to the meeting?

9 A I think so.

10 Q Okay.

11 A Yes.

12 Q And how long before that meeting did you become aware
13 that Mr. Milligan was considering purchasing those parcels?

14 A I don't remember.

15 Q There were -- there were -- it was in the newspaper,
16 right? Are you aware that it was in the newspaper?

17 A I recollect that there was a news article and I don't
18 remember whether it was in the newspaper or on an online
19 publication, Nancy on Norwalk. But I do recollect that
20 there was some news coverage that Mr. Milligan had an
21 interest in purchasing the property. I don't remember
22 whether it was prior -- if that came out prior to the sale
23 or after the sale.

24 ATTY. RUBIN: May I approach?

25 THE COURT: Sure.

26 Q Does that -- does that refresh your recollection?

27 A Can I have an opportunity to read it?

1 Q Please.

2 THE COURT: You know, Mr. Rubin, I -- I would
3 like to mark anything that's shown to a witness --

4 ATTY. RUBIN: Very well, Your Honor.

5 THE COURT: -- whether you intend to put it in,
6 you know, even if it's just to refresh recollection.
7 It just keeps things clear. Okay. I think the last
8 one was 38. No, no, not you, A something.

9 THE CLERK: This will be A-L. Defendant's A-L.

10 (Pause)

11 **BY ATTY. RUBIN:**

12 Q Mr. Coppola, may I swap -- it's the same thing, but
13 can I swap it out?

14 A Sure.

15 Q Thanks.

16 (Pause)

17 THE COURT: Okay. All right. Mr. Rubin.

18 THE WITNESS: Does Your Honor want that or --

19 THE COURT: Hang on to it, let's see with what
20 -- what he wants to do with it.

21 Q Does that refresh your recollection as to when you
22 learned of Mr. Milligan's intent to purchase the Lots?

23 A I don't know if I knew prior to the May 18th, 2018
24 date from this article, but it, I guess, refreshes my memory
25 that it was in the press that he was going to purchase the
26 properties before the closing.

27 Q It was in the Norwalk Hour on May 18th, right?

1 A Yes.

2 Q And are you -- were you aware from reading Nancy on
3 Norwalk blogs that it was actually -- the information was
4 released before that day?

5 ATTY. WILLIAMS: Objection. Hearsay and he's
6 quoting a document not in evidence.

7 ATTY. RUBIN: I asked if he was aware.

8 THE COURT: I agree, overruled.

9 A I think I was aware that there was a -- that Mr.
10 Milligan wanted to purchase the property before he did, I
11 don't remember whether back last summer my recollection --
12 whether my reference point for knowing that was something
13 that was on the Nancy on Norwalk blog or in the paper. But
14 I -- I believe I knew prior to the closing date that he was
15 -- he was intending to purchase those properties.

16 Q You -- you testified that there was a meeting on May
17 31st, correct?

18 A I don't remember testifying that there was a meeting
19 on May 31st, but if that's the date that -- I don't remember
20 the exact date, but there was a meeting, I believe, which
21 was the date that he recorded the deeds for the transfer.

22 Q Okay. And you also --

23 THE COURT: You're right, you didn't say a date.

24 Q Do you know -- is it --

25 ATTY. RUBIN: It was a badly worded question.

26 Q But you -- we can ascertain the date of the meeting
27 based on the date that the deeds were recorded, correct?

1 A I believe so, I could also check my phone and -- and
2 look at my calendar and see if I could find it.

3 Q If you like, sure.

4 THE COURT: Well, it's not at issue, right?

5 ATTY. RUBIN: I don't -- I don't think it's an
6 issue.

7 THE COURT: Can't we --

8 ATTY. WILLIAMS: There's been ample --

9 THE COURT: Can't we stipulate to the day?

10 ATTY. WILLIAMS: There's been testimony it was
11 May 31st.

12 THE COURT: Yeah, don't worry about it.

13 THE WITNESS: Okay.

14 A I believe it was a Thursday.

15 **BY ATTY. RUBIN:**

16 Q And the Purchase and Sale Agreement that you were in
17 possession of prior to that meeting, how did you come into
18 possession of the Purchase and Sale Agreement?

19 A I think it was provided to me by the Redevelopment
20 Agency's attorney at the time.

21 Q Which was who?

22 A Marc Grenier.

23 Q And Marc became -- he came into possession of it, do
24 you know how?

25 A I don't remember, you know, I don't remember
26 specifically who handed it to me. I know that somebody had
27 given me a copy of it to review prior to -- and I believe it

1 was prior to the meeting with Mr. Milligan on the date that
2 you've said which is May 31st. I don't remember -- I can't
3 say with certainty who got it, but my -- my -- my
4 recollection was that the RDA's attorney had gotten it.

5 Q Okay. Does it ring a bell or refresh your
6 recollection at all -- no, let me withdraw that.

7 Are you aware that Mr. -- I mean, Attorney Grenier
8 received a copy of the Purchase and Sale Agreement in
9 connection with the -- from Citibank in connection with the
10 right of first refusal that Citibank had?

11 A I don't remember how Mr. Grenier obtained a copy of
12 the Purchase and Sale Agreement.

13 Q Who was at that meeting? The meeting on the 31st.

14 A I believe it was the mayor, Harry Rilling, his chief
15 of staff, Laoise King, myself, Tim Sheehan, and Marc
16 Grenier. There may have been others but -- but I believe
17 all of those people was there.

18 Q Diane Beltz-Jacobson, was she there?

19 A I don't remember.

20 THE COURT: And Mr. Milligan, right?

21 THE WITNESS: And Mr. Milligan.

22 Q Okay. Out of those people, you're an attorney --

23 A Yes.

24 Q -- right?

25 A Yes.

26 Q And is Marc Grenier an attorney

27 A Yes.

1 Q And is Alicia (Sounds like) King an attorney?

2 A Yes.

3 Q The mayor, he's not an attorney, right?

4 A Not that I know of.

5 Q And how was that meeting arranged?

6 A I don't specifically remember. My vague recollection
7 was that it may have been scheduled through the mayor. I
8 think the meeting was initially scheduled for the morning,
9 and I think that day Mr. Milligan requested that the meeting
10 be postponed. I vaguely remember that.

11 I think the next day I was going on vacation for a
12 few days with my family.

13 Q What was the purpose of the meeting? What -- from --
14 what was the purpose from the public parties side for that
15 meeting?

16 A I believe the purpose of the meeting was that Mr.
17 Milligan wanted to speak with City and RDA officials. We
18 wanted to inform him of our concern, and also our position
19 that the property should not be transferred without the
20 prior approvals as required under the Land Disposition
21 Agreement, and maybe under the -- under other documents,
22 underlying documents that were recorded on the land records.
23 And I remember that we had informed Mr. Milligan at that
24 time during the meeting that that was our position.

25 Q Mr. Milligan did not call that meeting, right? The
26 meeting was called by the public parties.

27 A I don't remember who called the meeting.

1 Q Did you inform Mr. Milligan of the reason that the
2 meeting was being called?

3 A I don't remember who called the meeting so I -- I
4 don't know how I'd be able to answer your question as to --

5 Q Did you suggest --

6 A -- what was told to Mr. Milligan.

7 Q Did you suggest to Mr. Milligan that he bring an
8 attorney to the meeting?

9 ATTY. WILLIAMS: Objection, asked and answered.

10 THE COURT: I don't think so. Overruled.

11 A I don't think I set up the meeting so I don't
12 remember discussing whether or not he should have any
13 attorney present at the meeting.

14 Q Are you aware of whether anybody advised Mr. Milligan
15 that he should have an attorney at the meeting?

16 A I don't know.

17 Q There were at least three attorneys there for the
18 public parties, right?

19 A Ms. King is an attorney, she has a law degree, she
20 does not practice law on behalf of the City. She's the
21 Chief of Staff and, again, is not a practicing attorney for
22 purposes of her position with the City.

23 Q And you were aware at the time that Mr. Milligan had
24 an attorney in connection with this proposed --

25 THE COURT: Why are we doing this?

26 ATTY. RUBIN: What?

27 THE COURT: What's the relevance of this?

1 ATTY. RUBIN: It sets up the meeting in terms
2 of --

3 THE COURT: Yeah, yeah, but all this business
4 about you knew he had a lawyer and all this, what's
5 the importance of that? If you want to talk about
6 the meeting, let's talk about the meeting.

7 ATTY. RUBIN: I think the -- the circumstances
8 surrounding the meeting are important. I think the
9 Court noted that -- I will get to that -- but that
10 Mr. Milligan showed up for a meeting and was not --
11 was -- his lawyer should have been told or he should
12 have been told that --

13 THE COURT: I never said that.

14 ATTY. RUBIN: -- his lawyer should be there.

15 THE COURT: Just a minute, what do you mean?

16 ATTY. RUBIN: I can -- there was a -- on day
17 one, Your Honor, there was testimony from Mr. Sheehan
18 about the meeting, and you asked whether Mr. Milligan
19 had an attorney at that meeting.

20 THE COURT: Okay.

21 ATTY. RUBIN: And so I'm following up on those
22 questions.

23 THE COURT: All right. So we've established
24 that. Let's go.

25 ATTY. RUBIN: Okay.

26 **BY ATTY. RUBIN:**

27 Q At the meeting did you have a lawsuit already

1 prepared against Mr. Milligan?

2 A Prior to the meeting we were in the process of
3 drafting a lawsuit to try to get an injunction to prevent
4 the transfer of the property without getting -- without
5 prior approval from the Redevelopment Agency. And we
6 informed Mr. Milligan at the meeting that we had intended to
7 go forward with that lawsuit because we had desire to have
8 the parties get prior approval from the Redevelopment Agency
9 for any transfer.

10 Q You actually had that -- that lawsuit was fully
11 prepared and in hand at the meeting, right?

12 A That's not what I said. There was a -- we were
13 working on a draft of the lawsuit that day. I don't -- I
14 don't think it -- I don't think it was finished. I don't
15 know to what extent the draft -- at what point we were at in
16 having the draft completed.

17 Q Did you show --

18 A We were working at it at the time.

19 Q Did you show Mr. Milligan a lawsuit at that meeting?

20 A We were in the back conference room of the Law
21 Department for the meeting, and prior to Mr. Milligan
22 joining us in the meeting we were sitting in that room and
23 going over a draft of the lawsuit. So I happened to have it
24 in front of me during the meeting because the meeting got
25 postponed. And I think Mr. Milligan also showed up late to
26 the meeting, so we were already back there waiting for him.

27 I remember that I had to move around my schedule that

1 day because I was informed that the meeting was happening
2 that morning. And -- and then I came to -- to the City and
3 I remember having to move around my scheduled to accommodate
4 the meeting happening later than that was previously
5 scheduled for.

6 Q I -- Okay. So I understand that the lawsuit just so
7 happened to be in the room of the meeting, did you
8 physically show Mr. Milligan the lawsuit that you were
9 threatening to file?

10 A At some point in time during the meeting we discussed
11 that we had intended to file a lawsuit for an injunction. I
12 don't think I would categorize -- describe it as threatening
13 him, but we had informed him that we would do that if they
14 proceeded with the transaction without getting prior
15 approval from the Redevelopment Agency.

16 Q And that lawsuit could have been filed at any time
17 from when you learned about the proposed transaction to that
18 day of that meeting, but wasn't, correct?

19 A Well, it couldn't have been filed from the moment we
20 found out about the transaction, or potential transaction,
21 because it takes time to consider filing the lawsuit and it
22 takes time to draft it.

23 Q And after you found out that the properties were
24 transferred, did you then bring a lawsuit against Mr.
25 Milligan?

26 A At some point in time, thereafter, a lawsuit was
27 served and filed, yes.

1 (Pause)

2 ATTY. RUBIN: Is it A-M?

3 THE CLERK: A-M, Alpha -- Alpha Montana.

4 THE COURT: Any objection?

5 ATTY. WILLIAMS: I'm sorry, Your Honor, I just
6 got handed it, can I take a look?

7 THE COURT: Sure.

8 (Pause)

9 ATTY. WILLIAMS: Object to the relevance of
10 this, Your Honor. The fact that a PJR application
11 was filed previously and then was withdrawn when this
12 lawsuit was filed makes it entirely irrelevant. This
13 -- this is not before the Court.

14 THE COURT: Mr. Rubin.

15 ATTY. RUBIN: I can answer that as to relevance,
16 or I can just hold it until it becomes relevant. But
17 there are several points here in terms of the way
18 that Mr. Milligan was treated relative, by Mr.
19 Coppola and by the City, as it pertains to the
20 exercise of any rights that they had under the LDA.
21 But I'm comfortable -- you know, I won't even offer
22 it yet. We'll just --

23 THE COURT: Okay.

24 ATTY. RUBIN: I'll withdraw it.

25 THE COURT: All right. So it remains marked for
26 ID.

27 ATTY. RUBIN: Yeah.

1 THE COURT: Okay.

2 **BY ATTY. RUBIN:**

3 Q After Mr. Milligan purchased the properties, did you
4 and he have conversations?

5 A Yes.

6 Q Did you and he have conversations regarding what his
7 options were at that point in time?

8 A Yes.

9 Q Did he ask -- you know, what did you tell him?

10 A There were multiple conversations that I had with Mr.
11 Milligan after he purchased the property, so I don't
12 remember everything that was told to him. But there was
13 discussion about various options that he had. I believe he
14 had also been in conversations with counsel for the
15 Redevelopment Agency and possibly even Mr. Sheehan.

16 I think everybody had tried to make an effort to make
17 him aware of what information and documentation the Agency
18 and the City needed in order to consider him potentially for
19 status as a redeveloper or to consider whatever plans he
20 wanted to bring forward for the properties that he had
21 purchased.

22 Q What did you inform him that his options were?

23 A I believe there were letters that were sent to Mr.
24 Milligan which confirmed what information and documentation
25 he needed to provide.

26 ATTY. RUBIN: May I approach, Your Honor?

27 THE COURT: Sure.

1 ATTY. RUBIN: Exhibit 27.

2 (Pause)

3 **BY ATTY. RUBIN:**

4 Q Exhibit 27 is a letter that was sent to Mr. Milligan
5 that was authored by Tim Sheehan in connection with what Mr.
6 Milligan would need to do in order to move forward as
7 redeveloper. Is that what you're referring to?

8 A Can I have an opportunity to review, please?

9 Q Please, take your time.

10 (Pause)

11 A Okay.

12 Q When you had conversations with Mr. Milligan, does
13 this letter reflect what his options were at the time?

14 A I believe the letter references information and
15 documentation that we had talked about him providing. There
16 may have been other written correspondence with Mr.
17 Milligan.

18 There were numerous conversations with him in which I
19 made an effort to try to be helpful to discuss options with
20 him. And, generally, my recollection was that the calls
21 were at his request and they were numerous. And I do
22 recollect them being at night, on the weekends, and -- and
23 so there -- there were multiple calls, so I don't think I
24 could say exactly what was discussed in all the calls.

25 Q Right.

26 THE COURT: When you say night, at home?

27 THE WITNESS: Yes, there were numerous times

1 where we spoke at night. The conversations with Mr.
2 Milligan seemed to be rather lengthy and I was busy
3 during the day, so quite often I had offered to take
4 the calls at night. He had my personal cellphone
5 number, he texted me numerous times, many, many
6 times. And there were many times where he requested
7 to speak with me and I've taken the calls over the
8 weekend.

9 I do recollect one time was around the time of
10 the letter because it was my son's birthday, which
11 would have been around July 10th, and he texted me
12 and called me. And I said, you know, I'm having my
13 son's birthday party but when I'm done with the
14 party, if it's really that important, I'll talk to
15 you. So I do remember speaking with him on a
16 Saturday night sometime around July 6th, probably
17 around -- sometime around July 10th, 2018. So yes,
18 there were multiple calls that I took at his request.

19 **BY ATTY. RUBIN:**

20 Q Do you recall Mr. Milligan sending you an email
21 thanking you for that courtesy in connection with that
22 conversation that you provided that you gave to him around
23 the time of your son's birthday?

24 A Vaguely.

25 Q Yeah. And, in general, what did you understand Mr.
26 Milligan's desire to be in these communications and this
27 outreach to you?

1 A It was unclear. At various points it seemed as if he
2 was looking to sell the Phase II -- some of the properties,
3 I believe it was the Phase II properties to Citibank, and
4 keep some of the other buildings. I believe he had said, at
5 least, a few times that his -- that he wanted to hold some
6 of the buildings but would prefer to sell some to Citibank.

7 I believe he also discussed different options such as
8 offering a long term lease to Citibank for parking. So he
9 -- he discussed many different options, and I think it was
10 unclear as to, specifically, which option was his choice.

11 Q And is it fair to say that Mr. Milligan expressed to
12 you that he didn't really have a choice, he was open to a
13 whole world of different potential solutions relative to
14 dealing with these properties?

15 A I don't recollect him saying he didn't have a choice,
16 I just remember him --

17 Q Preference.

18 A -- stating that there were different options that
19 would be acceptable to him. For example, with regard to
20 selling the property or part or some of the properties to
21 Citibank. And that time was a big issue for him, and the
22 longer it took his price went up with Citibank.

23 Q I wasn't asking about a -- did he have a choice, I
24 used the word choice in lieu of the word preference. Did
25 you form an impression that he had preferences? Or did you
26 form an impression that he just wanted to open a dialogue
27 with the City in order to discuss any possible way to move

1 the development in the area forward?

2 A My recollection was that his preference was to sell
3 some of the properties which I believe were the Phase II
4 properties to Citibank, and to keep some of the other
5 properties.

6 Q Did you form an impression that he wanted to work
7 with -- that -- that he wanted a dance partner? That he
8 wanted to work with the public parties in terms of
9 developing the area?

10 A When he was asked by the public parties to provide
11 certain information and documentation he was unwilling to do
12 so, so I -- and that was a prerequisite to moving forward
13 with having those discussions. So I -- I don't know to what
14 extent he was willing to actually work with the public
15 parties.

16 Q So what exactly was a prerequisite to him being able
17 to have a willing dance partner to be able to move forward
18 with the public parties?

19 A The document that's in front of me, I believe is
20 Plaintiff's Exhibit 27 dated July 6, 2018 from Mr. Sheehan,
21 specifies certain documentation and information that he
22 would need to provide to the Agency to be considered, I
23 believe, as a redeveloper.

24 And there was other conversations or communications
25 with Mr. Milligan around this period of time in which I
26 believe the public parties informed him as to what
27 information and documentation they would need to be able to

1 evaluate whatever plans he wanted to bring forward.

2 Q Did the public parties inform Mr. Milligan or did you
3 inform Mr. Milligan that his becoming a redeveloper
4 consistent with the requirements of Exhibit 27 was a
5 prerequisite to having any discussions further about how to
6 develop the properties?

7 A No.

8 Q What is your recollection? Was there an option for
9 Mr. Milligan to have these discussions with the City in the
10 absence of him becoming redeveloper without first becoming
11 redeveloper?

12 A Yes, I believe that we had informed him that we could
13 have the discussions once certain information documentation
14 was provided to us, which would happen presumably before he
15 would be approved as a redeveloper.

16 Q And is that the information and documentation that's
17 requested on 27?

18 A I believe so. There may have been other information
19 and documentation that was requested.

20 Q Okay. So he -- he would need to either provide the
21 information on 27 and apply to be redeveloper, or he would
22 need to provide the information required on 27 and not
23 apply, but otherwise, discuss?

24 A If he was providing the information documentation
25 that was requested, the Redevelopment Agency's director and
26 others would have worked with him to evaluate what he was
27 submitting and to assist him with submitting whatever he

1 needed to submit in order to become -- or to apply to become
2 the redeveloper.

3 Q I just want to -- I want to dig down on what he was
4 obligated to provide before those conversations could occur.
5 Is what he was obligated to provide reflected in Exhibit 27?
6 Does 20 -- Exhibit 27 reflect the floor of what Mr. Milligan
7 needed to provide?

8 A Can I review the letter again?

9 Q Sure.

10 (Pause)

11 A Could you please repeat the question?

12 THE COURT: Why don't you -- no, I have to --
13 would you read back the question please, Lisa?

14 (Whereupon audio recording was played)

15 THE COURT: That's it.

16 A What -- when you asked me if it -- is the floor, what
17 did you mean by that? I'm confused by the question.

18 Q Sure. Okay. At a minimum, did Mr. Milligan need to
19 provide everything that was requested in -- in Exhibit 27,
20 and there could have been more, but at a minimum he needed
21 to comply with the -- the structure of Exhibit 27?

22 A For what purpose?

23 Q For any purpose, to have them -- discussions with the
24 City, the public parties, about how to move forward.

25 A No.

26 Q What did Mr. Milligan need to provide in order to
27 begin the discussions as to how to move forward?

1 A If he provided some of the information and some of
2 the documentation that was requested or referenced in the
3 letter, the public parties would have, I assume, would have
4 continued to have discussions with him.

5 In fact, I -- I believe that there was emailed
6 correspondence with you between Attorney Williams and I in
7 which we at various points told you, at a minimum, some
8 documentation and information that we would need to have
9 additional discussions regarding Mr. Milligan's desire to
10 discuss plans with the City.

11 Q What information that is reflected on 27 was the
12 floor? How was that -- well, let's start with that. I
13 mean, 27 says what it says. Can you please review 27 and
14 provide what information in there was, in your view, the
15 floor of what needed to be provided?

16 A I believe that that answer would be provided in
17 correspondence that was sent to you by Attorney Williams in
18 which we specified at a minimum some of the documentation
19 information that was needed to have those discussions.

20 Q Did you instruct City employees not to have any
21 discussions with Mr. Milligan?

22 A No.

23 Q Did you have any discussions -- let's break it --
24 let's start with in general. Did you have any discussions
25 with the Common Council in which you advised the Common
26 Council that the individuals on the Common Council should
27 not have any conversations with Mr. Milligan?

1 ATTY. WILLIAMS: Object -- Objection to the
2 extent it's involving attorney client privilege
3 discussions between Attorney Coppola as Corporation
4 Counsel and members of the Common Council which is
5 the legislative-body of the City of Norwalk.

6 THE COURT: Well, I mean, if it's in an open
7 meeting, I don't think you have an expectation of
8 privacy or confidentiality.

9 ATTY. WILLIAMS: Sure. I'm -- I'm just
10 objecting to what -- what would be privileged
11 communications --

12 THE COURT: Sure.

13 ATTY. WILLIAMS: -- that are inoperable.

14 THE COURT: Okay.

15 A If I was speaking with the Counsel then it would be
16 an Executive Session because I'm, you know, it would be a
17 quorum, I wouldn't be able to just have a meeting with the
18 Common Council without it being publically noticed. So if I
19 was going to have a -- so if there were discussions with the
20 Common Council regarding, for example, this litigation, it
21 would have been done in an Executive Session.

22 THE COURT: Okay. So you don't recall saying
23 these kinds of things in an open session?

24 THE WITNESS: Yes, I -- yes, I do not recall
25 that.

26 THE COURT: Okay.

27 Q You --

1 THE WITNESS: And I -- and I highly doubt that I
2 would have had -- had those discussions in an open --
3 in a public meeting.

4 THE COURT: Yeah. Okay.

5 **BY ATTY. RUBIN:**

6 Q Did you advise Steve Kleppin not to have any
7 discussions with Mr. Milligan concerning these properties
8 because there was pending litigation?

9 ATTY. WILLIAMS: Same objection.

10 THE COURT: Sustained.

11 ATTY. RUBIN: Mr. Kleppin testified yesterday
12 that he did so advise him, so I'm just trying to
13 confirm with him what he -- what he -- whether or
14 not, in his recollection, he had that conversation
15 with him or not.

16 THE COURT: Well, it doesn't change the fact
17 that if -- if the City's lawyer is speaking with a
18 City employee about a litigation, it's credible that
19 it would have been an attorney client communication.

20 ATTY. RUBIN: May I, Your Honor? May I be heard
21 on that?

22 THE COURT: All right.

23 ATTY. RUBIN: The -- I'm not asking for the
24 substance of anything relative to the
25 representation --

26 THE COURT: Yes, you are.

27 ATTY. RUBIN: -- itself.

1 THE COURT: You're asking did you tell him not
2 to speak to Mr. Milligan. That is -- did you --
3 you're asking him did you tell him not to speak to
4 Mr. Milligan? That's what he said to -- that's what
5 you're asking, did you -- he say that to him. See
6 that's -- that is into the content of the
7 conversation.

8 **BY ATTY. RUBIN:**

9 Q Is there a difference -- you have a policy -- let's
10 -- do you have a policy --

11 THE COURT: So it's sustained.

12 Q -- that if there is a pending litigation City
13 employees should not discuss that pending litigation with
14 the litigant?

15 ATTY. WILLIAMS: Objection. Asking that
16 question is asking for attorney client privilege
17 advice.

18 THE COURT: No, it's is there a policy, I'll
19 allow it. Overruled.

20 A There's not a written policy with regard to how we
21 handle discussions pertaining to pending litigation.
22 However, it is my general advice that City officials and
23 staff shouldn't speak to parties involved in active
24 litigation regarding the active litigation.

25 However, I do not tell City employees or officials
26 that they can't speak to people who are parties to
27 litigation about matters that are not involved in the

1 litigation, or in this case, properties that are not related
2 to the litigation.

3 (Pause)

4 Q And within weeks of Mr. Milligan purchasing the
5 properties there was active litigation, correct?

6 A I believe we established that the properties were
7 purchased on May 31st, you've handed me an exhibit --

8 Q Please don't testify from that exhibit. I'm just
9 asking you if it refreshes your recollection just to answer
10 my question. I don't want you testifying from an exhibit
11 not in evidence.

12 ATTY. WILLIAMS: It's not in evidence so --

13 A Okay. To -- to answer --

14 ATTY. WILLIAMS: -- please turn that over.

15 A I guess to answer the question, I don't know what the
16 date was that the lawsuit was filed with the court. If you
17 were to show me a record from the court website showing me
18 when the lawsuit was filed, then I could answer your -- your
19 question.

20 Q Let me ask you this.

21 THE COURT: Well, I don't see why he can't look
22 at that.

23 Q Yeah, can you just look at the --

24 THE COURT: I think you just --

25 Q -- lawsuit?

26 THE COURT: -- just refresh your recollection.

27 THE WITNESS: There's --

1 THE COURT: Don't talk about the content.

2 THE WITNESS: Yeah, there -- I was just going to
3 say it's not clear from this. So the point is
4 that --

5 ATTY. RUBIN: It is clear from it. Sorry.

6 THE COURT: Why don't you -- well, no, tell him
7 where he should look.

8 THE WITNESS: And, by the way, this -- and by
9 the way, this document I don't think is -- is
10 actually the document that was -- was filed. It
11 seems to be missing parts of it, so. I see that --

12 ATTY. WILLIAMS: Yeah, no, this isn't --

13 THE WITNESS: I see --

14 ATTY. WILLIAMS: -- it's not in evidence, so
15 let's not all speak from it. But I don't think
16 Attorney Rubin should be representing off of this
17 document.

18 THE COURT: Well -- Okay. I mean, can't we --

19 ATTY. WILLIAMS: It can -- let me just say this,
20 Your Honor.

21 THE COURT: We can stipulate, right?

22 ATTY. WILLIAMS: It's on -- it's on the Court
23 docket --

24 THE COURT: Okay. So when was the --

25 ATTY. WILLIAMS: -- that the PJR action was
26 served on June 18th.

27 THE COURT: Okay.

1 ATTY. WILLIAMS: There are different dates in
2 this document, that's why I stood up to just --

3 THE COURT: Okay.

4 ATTY. WILLIAMS: -- to let the Court know.

5 THE WITNESS: I can answer the question if --

6 THE COURT: All right. Is that good for you,
7 Mr. Rubin?

8 ATTY. RUBIN: Yes.

9 THE COURT: All right. So -- so Mr. Coppola,
10 we'll stipulate that it was served on June 18th.

11 ATTY. WILLIAMS: Yes.

12 THE COURT: Okay.

13 THE WITNESS: So what was the question, again?

14 **BY ATTY. RUBIN:**

15 Q Well, my question -- and, in fact, it was -- versions
16 of this -- of what was filed were actually prepared within
17 the weekend of Mr. Milligan's purchase of the property,
18 correct?

19 ATTY. WILLIAMS: Objection.

20 THE COURT: Sustained.

21 Q Did you forward a copy of the proposed complaint that
22 was served on June 18th, did you forward a copy to Nancy on
23 Norwalk prior to it being served on Mr. Milligan?

24 ATTY. WILLIAMS: Objection to the relevance.

25 ATTY. RUBIN: Oh, it's relevant, Your Honor.

26 THE COURT: Why?

27 ATTY. RUBIN: Because it is -- it is -- if they

1 went to the press with it prior to it being served,
2 and if there are instructions not to discuss -- that
3 people should not be discussing -- the general policy
4 is employees should not discuss with Mr. Milligan any
5 properties based on any pending litigation. Having
6 any discussions with anybody in the Common Council
7 became difficult because everybody was under the
8 impression they could not talk to him.

9 And the nature of this lawsuit is not this
10 lawsuit, this is a different lawsuit. And the nature
11 of this lawsuit makes that problematic.

12 THE COURT: Sustained. I don't --

13 ATTY. WILLIAMS: Thank you.

14 THE COURT: I mean, I don't -- you may get -- I
15 just don't see it yet.

16 ATTY. RUBIN: Okay.

17 **BY ATTY. RUBIN:**

18 Q What was the basis of the lawsuit?

19 ATTY. WILLIAMS: Objection. Are we talking
20 about this lawsuit or back to the PJR?

21 THE COURT: June 18, right?

22 ATTY. RUBIN: Yeah.

23 THE COURT: The first lawsuit.

24 ATTY. RUBIN: Yeah.

25 ATTY. WILLIAMS: Right, I -- so I continue to
26 object to the relevance of it, it has nothing to do
27 with claims in this action.

1 THE COURT: Well --

2 ATTY. WILLIAMS: This has all happened --

3 THE COURT: -- I don't know that, let's find --
4 let's find out and then we'll see.

5 THE WITNESS: What's the question again?

6 **BY ATTY. RUBIN:**

7 Q Sure. The question was what causes of action were
8 set forth -- it was a proposed complaint, right? It wasn't
9 an actual complaint because it was really PJR application,
10 right?

11 A Yes.

12 Q And what were the proposed causes of action?

13 (Pause)

14 A Based on the document you provided me, Count one,
15 breach of contract. Count two, tortious interference with
16 contract. Count three, avoidance and recovery of fraudulent
17 transfer under Connecticut General Statute 52-522e
18 Subsection A, Subsection 1; and 52-552h.

19 Q So it was a -- the equitable part of it was a
20 fraudulent transfer claim, correct?

21 ATTY. WILLIAMS: Your Honor, I'm objecting to
22 the relevance again, we haven't heard why it's
23 relevant. This is -- this is all after the deed was
24 done and the properties were purchased, now we're
25 talking about what the City did to try to enforce its
26 rights. That's --

27 THE COURT: That's true.

1 ATTY. WILLIAMS: That's not relevant to the
2 claims in this case.

3 THE COURT: Oh, yeah, why is it relevant?

4 ATTY. RUBIN: I'll ask him the next few -- the
5 next question and it will establish it. But I'll --
6 I'll answer the question now.

7 That there was never a desire to sit down and
8 listen to anything that Mr. Milligan had to say.
9 They sued him within days, the -- the draft complaint
10 was done within days. There were other
11 communications to interfere with his ability to
12 finance, interfere with his ability to get title
13 insurance.

14 And so the idea that -- and they -- that was
15 kept open, this action, which -- which, from a legal
16 standpoint, and I'll ask Mr. Coppola, he's an
17 attorney, I think is a sham. It was done in --

18 THE COURT: Well, you know, you don't have a
19 counterclaim in this action so I'm not sure why this
20 is relevant to whether, you know --

21 ATTY. RUBIN: In order --

22 THE COURT: -- there was tortious interference
23 and those kinds of things and --

24 ATTY. RUBIN: My issue is --

25 THE COURT: -- unfair --

26 ATTY. RUBIN: -- only as to the fraudulent
27 conveyance. They're here for equity. They're before

1 this Court to get a temporary injunction in support
2 of a claim for permanent injunction. In order to get
3 equity, you have to provide equity.

4 They sought to tie this property up from day one
5 of when he purchased it under legal theories that
6 were unsustainable as a matter of law. And this was
7 all --

8 THE COURT: And you say, you say that excuses
9 the actions of your client?

10 ATTY. RUBIN: No, I'm not. But I'm saying --

11 THE COURT: Well, then what's the point?

12 ATTY. RUBIN: Because they can't -- because they
13 can't get equity -- their -- their hands, a defense
14 to whether or not they can get equity is clean hands.
15 And I do not -- I don't believe -- we haven't filed a
16 pleading to the complaint yet because we still have a
17 pending motion to strike, but unclean hands is a
18 defense and it predicates the fact that they withdrew
19 this application the same day that they filed this
20 action.

21 So there was never a moment between June and the
22 current date when there was not a claim as to an
23 interest in the property that prevented Mr. Milligan
24 from getting title insurance or any other financing.

25 And if this was based on a sham, I think that's
26 relevant to their ability to have -- to get equity in
27 this case. It certainly would go to a defense of

1 unclean hands.

2 THE COURT: Which hasn't been asserted. What?

3 ATTY. WILLIAMS: Your Honor, I'm surprised to
4 hear that again, Attorney Rubin said that at the very
5 beginning of this hearing that there was not one
6 minute or not one hour that there wasn't a claim
7 pending. Attorney Coppola just testified, and we
8 stipulate it's on the court docket, this action was
9 served on June 18th.

10 And it's also been testified and the documents
11 are in evidence that the closing that we are
12 challenging in this action was done on May 31st.

13 So this is the City of Norwalk and the
14 Redevelopment Agency taking legal action to deal with
15 something that happened before this point. That
16 can't constitute an unclean hands defense, especially
17 when you're talking about First Amendment protected
18 activity by public bodies that are bringing legal
19 actions to try to undo something that happened
20 before.

21 That's not what the unclean hands defense even
22 gets at. It talks about needing to show that your
23 conduct has been fair, equitable, and honest as to
24 the particular controversy in issue.

25 So where unclean hands could potentially be
26 relevant is did something happen before the property
27 purchase that we're challenging that was unfair, not

1 are you unhappy with the claims that were brought
2 against you afterwards for what was done.

3 Does the fact that we amended our complaint
4 after we brought this lawsuit, can that constitute
5 grounds for an unclear action? It may be grounds for
6 a motion, it may be grounds for an amendment. But
7 the fact that a PJR action was filed with many claims
8 that are included in the current case, some that are,
9 some that aren't --

10 THE COURT: Right.

11 ATTY. WILLIAMS: -- the fact that the strategy
12 was adjusted a little bit --

13 THE COURT: Well --

14 ATTY. WILLIAMS: -- over the course of time is
15 not relevant.

16 THE COURT: Let -- let me just say I -- it may
17 be that I will agree with you, but I am not going to
18 make that finding now. And I'm inclined to let them
19 prove their case, you know, within limits.

20 I mean, this is not --

21 ATTY. RUBIN: Your Honor --

22 THE COURT: -- you know, I -- I'm not --

23 ATTY. RUBIN: -- I don't think I'm going to
24 be --

25 THE COURT: -- going to get into every slight --

26 ATTY. RUBIN: I'll be less than ten minutes.

27 THE COURT: -- that -- that - may have --

1 ATTY. RUBIN: I'm going to be less than ten
2 minutes --

3 THE COURT: -- been felt.

4 ATTY. RUBIN: -- on this topic.

5 THE COURT: Okay.

6 ATTY. RUBIN: You can put -- you can hold me to
7 that.

8 THE COURT: I'm watching it.

9 ATTY. RUBIN: Okay.

10 THE COURT: All right.

11 ATTY. WILLIAMS: (Inaudible).

12 ATTY. RUBIN: Unless he objects every three
13 seconds.

14 **BY ATTY. RUBIN:**

15 Q You were aware at all times in -- at all times over
16 the -- since January 1st, 2016 that there was debt on the
17 Phase II and III properties that Mr. Milligan purchased from
18 ILSR that exceeded the value of those properties, correct?

19 A I -- I would not say that I knew during that period
20 of time what the debt to equity ratio was on those
21 properties.

22 Q You were aware that Citibank had foreclosed in
23 connection with the Phase I properties and took a deed in
24 lieu, right? And the -- Right?

25 A I'm attorney -- I'm the Corporation Counsel for the
26 City and there's a lot of City matters that I'm involved in,
27 so if you're asking me during that entire period of time was

1 I aware of what the debt to equity ratio was for the
2 property, or --

3 THE COURT: I think that's a different --

4 A -- what Citibank did, I -- I --

5 THE COURT: It's a different question.

6 THE WITNESS: Okay.

7 THE COURT: And he'll just, occasionally, he
8 doesn't tell you he's going to do a different
9 question but he moves on now and then, and it's okay.
10 I mean, it's fine. But he's now asking you where the
11 Citibank foreclosed and did a deed in lieu.

12 **BY ATTY. RUBIN:**

13 Q You knew in 2016, I think it was, that Citibank took
14 a deed in lieu of foreclosure?

15 A Yes.

16 Q And that that property -- all the Phase I properties
17 were under water, right?

18 A I don't remember knowing that the Phase I properties
19 were under water.

20 Q That's why you take a deed in lieu, isn't it?

21 ATTY. WILLIAMS: Well, he's -- Objection, he's
22 trying to get him to admit to what Citibank knew or
23 why it accepted a deed in lieu of foreclosure, and
24 now that you need to (indiscernible) putting forth a
25 general proposition that's why you do things as if
26 that shows what Attorney Coppola knew.

27 THE COURT: Okay.

1 ATTY. RUBIN: I'll withdraw it.

2 THE COURT: Yeah. Okay.

3 **BY ATTY. RUBIN:**

4 Q You -- you knew that Ken Olson had died, right?

5 A At some point Ken Olson died, yes.

6 Q Right. And -- and this property was failing, right?
7 The construction of Phase I was failing right?

8 A At some point my understanding was that the
9 construction of Phase I was stalled.

10 Q And that was 2016?

11 A I don't remember the exact date.

12 Q You are aware that there was probably about a year's
13 worth of construction done on this project total by the
14 Redeveloper between 2007 and the current date, right?

15 A That sounds correct.

16 Q And you knew there was a ten million dollar shortfall
17 when they stopped working on Phase I, right?

18 A I don't remember the exact number of the shortfall,
19 and I don't recollect discussing the issue.

20 Q Do you recall that there was a shortfall?

21 A A shortfall from what?

22 Q A shortfall in terms of ILSR's ability -- No, it
23 wasn't ILSR, it was the other entity that was a subsidiary
24 of Poko being able to continue work without the -- without
25 financing.

26 A I knew there were issues with the construction costs
27 associated with Phase I. I knew there were issues with the

1 project because Mr. Olson got sick. I don't remember
2 specifics as to numbers or dates regarding --

3 Q You --

4 A -- regarding the Developer's issues pertaining to the
5 construction at the property or any of the Developer's
6 issues with the bank. I wouldn't have been involved in
7 those discussions because I don't represent the bank and I
8 didn't represent the Developer.

9 Q You knew there was a budget gap, right?

10 ATTY. WILLIAMS: Objection, can we -- can we
11 have a point in time or a date for this?

12 ATTY. RUBIN: Yeah, in two thousand --

13 ATTY. WILLIAMS: It's very vague.

14 ATTY. RUBIN: -- 2016, 2017.

15 ATTY. WILLIAMS: At any time during the years of
16 2016 or 2017, that's the question.

17 A My -- my understanding was at some point in time
18 there was an issue with the construction costs, I don't
19 recollect whether there was a budget gap and, if so, what
20 the -- how much the budget gap was. I don't remember ever
21 seeing a document that referred to a budget gap.

22 Q Were you aware that there was financing in connection
23 with Phase II --

24 A Yes.

25 Q -- or there was over five million dollars in
26 financing?

27 A I recollect that I knew that there was financing

1 associated with Phase II. I don't recollect knowing the
2 amount of the financing.

3 Q Was it your impression or understanding at the time
4 that -- that ILSR was current on their debt?

5 A I don't remember knowing whether ILSR was or wasn't
6 current on its debt.

7 Q Did you form a belief that ILSR was in default of
8 Phase I yet current on Phase II?

9 A I don't understand your question.

10 Q Did you form an impression that ILSR was under water
11 with respect to the loan that it had as it pertains to Phase
12 II properties?

13 A I knew there were issues with the Phase I
14 construction. I don't remember having conversations with --
15 is it ILSR?

16 Q Yes.

17 A -- with ILSR or the bank about whether they were
18 under water or what the --

19 Q You knew there was a right --

20 A -- or what the debt to equity ratio was on the
21 project.

22 Q You knew there was a right of first refusal by
23 Citibank, right?

24 A At some point I was made aware that Citibank had a
25 right of first refusal to purchase the -- I believe the
26 Phase II and maybe the Phase III properties.

27 Q Did that alert you as to the value of the -- of the

1 debt that was on those properties at the time? In other
2 words, the purchase price?

3 A At the time that Citibank informed the seller that
4 their right of first refusal would be violated by the
5 transfer of the properties to Mr. Milligan, I believe at
6 that time I may have known that -- that the -- the number
7 was around five million.

8 Q What number was around five million?

9 A I believe there was a -- a mortgage that may have
10 been around five million, I don't remember the exact number.

11 Q A principal amount of five million or an outstanding
12 debt of five million?

13 A I don't remember.

14 Q Did you have any idea that the debt exceeded the
15 value of the mortgage?

16 ATTY. WILLIAMS: Objection. I think it's been
17 asked and answered --

18 THE WITNESS: Yeah.

19 ATTY. WILLIAMS: -- and it's really gone down an
20 irrelevant direction as to exactly what Attorney
21 Coppola knew about the debt on the property and when.

22 THE COURT: I'll allow it.

23 ATTY. RUBIN: Yeah.

24 A I thought I answered before, no.

25 Q Weren't you the negotiator? What -- what was your
26 role --

27 THE COURT: Wait a minute, you've asked a

1 question which I just decided to allow, and now
2 you're moving onto something else?

3 ATTY. RUBIN: Absolutely not. I withdraw my
4 question --

5 THE COURT: Pl

6 ATTY. RUBIN: -- and I will want him to answer
7 the question that the Court just allowed.

8 THE COURT: I'm just trying to keep up with you
9 here, Mr. Rubin.

10 THE WITNESS: What's the question?

11 ATTY. RUBIN: I work faster than my mouth.

12 THE COURT: As to we were -- there's --

13 THE WITNESS: I'm confused, what's the question?

14 THE COURT: No, he's -- we're going to start
15 with something else.

16 THE WITNESS: Okay.

17 **BY ATTY. RUBIN:**

18 Q Were you aware that -- were you aware that there were
19 personal guarantees by the Olson's in connection with the
20 debt on Phase II and Phase III properties?

21 A At some point in time I was aware that there were
22 personal guarantees because there was another lawsuit that
23 another debtor had filed against the Olson's.

24 Q That would be CC Rivington or the assignee of the MC
25 Credit debt?

26 A Yes.

27 Q Weren't you involved in the negotiation of the

1 foreclosure, the deed in lieu of foreclosure? Did you have
2 any role in connection with the deed in lieu of foreclosure?

3 A If -- if I did it would have been very limited. I'm
4 a part time employee in the Law Department. With regard to
5 matters pertaining to the Poko Development, prior Assistant
6 Corporation Counsel, Diane Jacobson, was generally the
7 attorney in the Law Department who was assigned the project
8 and would handle those issues.

9 So I think my involvement with the Poko project
10 prior to the unpermitted transfer was limited to briefing me
11 when there was a major issue to discuss, or when there was a
12 matter or an issue or a document pertaining to the project
13 that was, like, going before the Common Council.

14 Q You had a -- you knew what the transaction was going
15 to be between ILSR and Wall Street because you had a copy of
16 the Purchase and Sale prior to the closing, right?

17 A I believe so, yes.

18 Q And you knew that there was no relationship, that
19 there was -- it was -- they were independent parties, there
20 was no relationship between ILSR and Wall Street, correct?

21 A I wouldn't say I knew that because I don't know if we
22 knew for sure who the members were of -- of all these
23 entities involved, including CC Rivington. I believe the
24 lender was referred to in the Purchase and Sale Agreement.

25 Q Yeah, that wasn't --

26 A So --

27 Q -- that wasn't my question.

1 A Well, just to finish the -- my answer. I -- I don't
2 -- at the time, I don't think we knew who all the
3 individuals were that were involved with the various
4 corporate entities that were involved in the transaction.

5 Q You knew ILSR, right? You had approved the transfer
6 from Poko to ILSR and knew that ILSR was a wholly owned
7 subsidiary of Poko, right?

8 A I didn't approve it, the Common Council and the RDA
9 would have. But I guess I was, yes, vaguely familiar with
10 who was involved with ILSR.

11 Q You knew that ILSR was a wholly owned subsidiary of
12 Poko, right?

13 A I don't remember what I knew as far as the ownership
14 of ILSR, whether it be a year or two years ago, but that
15 sounds right that that entity was a wholly owned subsidiary
16 of Poko. I'd have to review documentation and records to
17 confirm that for you.

18 Q In fact, you knew it because you were intricately
19 involved in the attempt to abandon Isaac Street? Weren't
20 you involved in the attempt to abandon Isaac Street in an
21 effort to merge Phase I and Phase II properties?

22 A I was involved, I -- I think at the beginning of the
23 question you said intrinsically involved, is that correct?

24 Q Are you --

25 THE COURT: Intimately is actually
26 (indiscernible).

27 A Intimately. Yeah, so I don't -- I wouldn't say

1 intimately involved. Again, Attorney Jacobson was the
2 attorney in the Law Department who was assigned to deal with
3 issues pertaining to the Poko project, so I wasn't
4 intimately involved.

5 To the extent an issue came up that Ms. Jacobson
6 wanted to discuss with me, I would discuss it and maybe
7 review the issue, but for the most part, she was the
8 attorney who handled those issues. And she was the attorney
9 who was involved with the -- with the abandonment of, or the
10 attempted abandonment of that street.

11 Q You were -- you were aware that Isaac -- the Isaac
12 Street abandonment was to act as a bridge between the wholly
13 owned subsidiary of the owner of the Phase I properties, and
14 the other owner of the Phase II properties that also was a
15 wholly owned subsidiary of Poko, correct?

16 A What do you mean a bridge? I don't understand the
17 question.

18 Q I can reestablish that. That there was -- are you
19 aware that there was a transfer of parking in 2018 from
20 Phase I to Phase II?

21 THE COURT: It was the transfer of the unity of
22 the lots.

23 THE WITNESS: The --

24 THE COURT: Okay. It was a connection between
25 the two parcels. Okay.

26 In other words, they had the lot where the --
27 the Tyvek building is. And then the abandonment of

1 the street would facilitate a connection bound to the
2 parking lot, the Leonard Street Lot, so they could
3 access the FAR on the -- on the other lot.

4 THE WITNESS: Yeah, yeah, so when --

5 THE COURT: So he -- it's been called a bridge
6 here --

7 THE WITNESS: Okay. So --

8 THE COURT: -- it's not like a physical
9 bridge --

10 THE WITNESS: Okay. Because I'm --

11 THE COURT: -- it's a connection.

12 THE WITNESS: All right. I was confused also by
13 the question because my understanding was that the
14 abandonment was necessary for purposes of complying
15 with an FAR requirement.

16 THE COURT: That's right.

17 THE WITNESS: And so I thought it was less the
18 issue of connection and more the issue of trying to
19 comply with the FAR requirement.

20 THE COURT: Well, there's some -- there's some
21 confusion about whether the strip that was abandoned
22 would solve the FAR problem by itself, you know, ten
23 thousand square feet or whatever. Or most people are
24 saying it's -- no, it was also to make a -- allow a
25 connection to the other lots so they'd be contiguous.

26 THE WITNESS: It may have served multiple
27 purposes, the --

1 THE COURT: Right.

2 THE WITNESS: -- the abandonment.

3 THE COURT: Right.

4 ATTY. RUBIN: Yeah, I was going to show him the
5 demonstrative paintings (sounds like).

6 THE COURT: Sure.

7 ATTY. RUBIN: I'm going backwards and backwards
8 to get back to my original point, but so be it.

9 THE WITNESS: I think we're passed ten minutes.

10 ATTY. RUBIN: Do you have A-H?

11 THE CLERK: A-H should actually be with the
12 witness, I think.

13 ATTY. RUBIN: Do you have A-H?

14 THE COURT: Well, wait a minute, the question is
15 was he involved and he said not too much. I mean,
16 he's some, but that this other lady actually handled
17 it.

18 ATTY. RUBIN: I guess -- Right, I'm not -- But
19 my ultimate question is was -- is he aware that ILSR
20 was a wholly owned subsidiary of Poko. And he was a
21 little aware but not that aware.

22 THE COURT: He said it sounds right to him.

23 ATTY. RUBIN: Okay.

24 THE COURT: You know, let's -- let's stay
25 focused here.

26 ATTY. RUBIN: Okay. I won't digress.

27 **BY ATTY. RUBIN:**

1 Q Were you aware that Jason Milligan was not part of --
2 was independent of Poko and its wholly owned subsidiaries?

3 A It was my understanding that he was not part of Poko
4 but we did not know if Mr. Milligan or any members of his
5 companies or investors had a connection with -- with anyone
6 from Poko or the lender CC Rivington. And that's why, at
7 various times, we requested verification from Mr. Milligan
8 as to who was involved with his companies.

9 Q Had Mr. Milligan been a part of Poko, this would have
10 been a permitted transfer, it would have been a permitted
11 transfer just like the transfer from Poko to ILSR, right?

12 A No.

13 Q Doesn't the LDA have a provision about permitted
14 transferees as of right if there's a relationship with the
15 redeveloper?

16 A I don't know, I'd have to review the document.

17 Q Are you aware of the circumstances under which ILSR
18 was transferred, the development rights of the Phase II
19 properties, from Poko?

20 A I'd have to review the underlying records pertaining
21 to the transfer.

22 Q When you brought the fraudulent conveyance count, did
23 you believe that there was -- that -- that Wall Street was
24 an insider relative to ILSR? Or did you believe them to be
25 arm's-length parties?

26 ATTY. WILLIAMS: Objection. Attorney Coppola is
27 the Corporation Counsel, he's the lawyer for the City

1 of Norwalk. And so what he's being asked is mental
2 impressions, any -- anything that would answer that
3 question would go to attorney work product and
4 attorney client privilege in deciding why he filed
5 the PJR action.

6 THE COURT: Why don't we just -- why don't we
7 just enter into the record what that count says about
8 that?

9 ATTY. WILLIAMS: Well, I had objected to the
10 complaint -- to the PJR application going in, Your
11 Honor, it was kept as ID, so.

12 THE COURT: I'm -- I'll reconsider that.

13 ATTY. WILLIAMS: Okay.

14 ATTY. RUBIN: And I think it's been -- I think
15 it's been -- yeah. I move that -- that what's been
16 marked as the exhibit be put into evidence.

17 ATTY. WILLIAMS: Just for the record, I'm
18 standing up prior --

19 THE COURT: Yeah, what is that, A what?

20 THE WITNESS: It looks like A-M, Your Honor.

21 THE COURT: All right.

22 THE WITNESS: Defendant's Exhibit A-M.

23 THE COURT: All right. A-M comes in as full, if
24 you'd give it to me --

25 THE WITNESS: Yeah, sure.

26 THE COURT: -- he'll mark it.

27 ATTY. RUBIN: Your Honor, I have a concern that

1 that is not the final copy that was drafted that was
2 filed because their date is left open. And it, you
3 know, it's funny, it's an unsigned complaint but
4 complaints are unsigned --

5 THE COURT: That's how you do it.

6 ATTY. RUBIN: -- in the PJR. Right, so it is
7 (indiscernible).

8 ATTY. WILLIAMS: If --

9 THE COURT: Go ahead.

10 ATTY. WILLIAMS: Excuse me, Your Honor, is -- is
11 this the document that's filed on the court docket or
12 not? Because if it's not then it -- it should not be
13 allowed.

14 ATTY. RUBIN: I believe that it is because I did
15 this in December and I believe that's where we would
16 have gotten it from. But if it's not -- if it's not
17 then I would -- well, we can just pull it up on the
18 court docket.

19 ATTY. WILLIAMS: It should be -- it should be
20 held until, I think, we have a clear representation
21 on that, Your Honor. I don't think it should go in
22 and maybe we'll deal with it later if we figure it
23 out.

24 THE COURT: Well, what -- well, I mean, didn't
25 you draft this?

26 ATTY. WILLIAMS: Did I? No.

27 THE COURT: I mean --

1 ATTY. WILLIAMS: I was not involved at this
2 point.

3 ATTY. RUBIN: It was the Law Department --

4 THE COURT: Oh, I see.

5 ATTY. RUBIN: -- (inaudible).

6 THE WITNESS: Your Honor, it looks like that --
7 the document that was put before me looks like it's
8 missing some pages to it so --

9 THE COURT: I see.

10 THE WITNESS: -- if that's helpful.

11 THE COURT: That is helpful.

12 THE WITNESS: I didn't draft it but it looks to
13 me like it's missing pages.

14 THE COURT: Okay.

15 ATTY. RUBIN: What pages?

16 THE COURT: Okay. Let -- here's what we can do.

17 ATTY. CALLAHAN: Your Honor -- Your Honor --

18 THE COURT: It's a problem if it's missing
19 pages.

20 ATTY. WILLIAMS: It is, it is, Your Honor.

21 THE COURT: Yes.

22 ATTY. RUBIN: What pages though? I mean, the
23 pages on the substance of the fraudulent conveyance
24 count, or pages relating to what would be provided as
25 PJR papers such as proposed orders and things like
26 that?

27 THE WITNESS: It looks like whatever was filed

1 with the court isn't -- is not representative of what
2 the document was before me. It looks like there's
3 pages that were included in what was filed with the
4 court, but not included in this document.

5 THE COURT: Okay. All right. So we're going to
6 keep it in the ID. But, Mr. Rubin --

7 ATTY. RUBIN: Yeah.

8 THE COURT: -- let me make a suggestion to you.

9 ATTY. RUBIN: Yeah.

10 THE COURT: Go to the count of the fraudulent
11 conveyance --

12 ATTY. RUBIN: Yeah.

13 THE COURT: -- and ask if he recalls that this
14 is what it said.

15 (Pause)

16 **BY ATTY. RUBIN:**

17 Q Well, one of the -- Paragraph 30 says the defendant
18 ILSR Owners, LLC transferred its interest in the 21 Isaac
19 Street, 20 -- 23 Isaac Street, 31 Isaac Street, 83 Wall
20 Street, and 97 Wall Street to defendant Wall Street
21 Opportunity Fund, LLC with the intent to defraud, delay and
22 hinder its creditors, including the plaintiff, from
23 obtaining satisfaction of plaintiffs' claims pursuant to the
24 fraudulent conveyance statute. My -- my question about that
25 is how is the City of Norwalk a creditor of ILSR as it
26 pertains to the property?

27 ATTY. WILLIAMS: Objection to the relevance,

1 that's not even an allegation against the Milligan
2 defendants. And the assertion that this is relevant,
3 Your Honor, is that it was somehow hurting the
4 Milligan defendants after they bought these
5 properties. That has nothing to do with it.

6 And I just want to remind, the Court has not
7 allowed this into evidence yet. I believe you
8 advised Attorney Rubin he could ask Attorney Coppola
9 if he remembered making a certain allegation.

10 THE COURT: That's true.

11 ATTY. WILLIAMS: He's reading from it and asking
12 him about --

13 THE COURT: Well, you've got to establish that
14 that's correct --

15 ATTY. RUBIN: Okay.

16 THE COURT: -- first.

17 Q Do you believe --

18 THE COURT: That's right. Sustained.

19 Q Do you believe that the City of Norwalk is a creditor
20 -- was a creditor of WILSR?

21 ATTY. CALLAHAN: Objection --

22 ATTY. WILLIAMS: Well --

23 ATTY. CALLAHAN: -- this is work product. I --
24 I've sat back and listened to these questions but
25 this is clearly work product, it's clearly attorney
26 client privilege. It's going to require us to even
27 to -- to cross on this to delve right into these

1 issues. It's entirely unfair to get at these (sounds
2 like) questions.

3 Yeah, if they have a cause of action against the
4 City, they should bring it. But this is not the
5 correct way to do it.

6 THE COURT: What I was suggesting, Mr. Rubin,
7 was look at it and say now, did you assert that the
8 City was a creditor against ILSR, not ask why or what
9 it means. But just let's establish that those were
10 the assertions.

11 **BY ATTY. RUBIN:**

12 Q Did you assert in the context of a fraudulent
13 conveyance count in a PJR claim that the City was a creditor
14 of ILSR?

15 THE WITNESS: Can I please see the document,
16 Your Honor?

17 THE COURT: Yeah.

18 THE WITNESS: Thank you.

19 THE COURT: And you're saying Paragraph 30?

20 ATTY. RUBIN: Yeah.

21 (Pause)

22 A Please repeat the question.

23 Q Sure. Do you -- did you allege that the City was a
24 creditor of ILSR in connection with the fraudulent transfer
25 claim?

26 A I believe the allegation was that the plaintiffs were
27 creditors because of an interest in the property.

1 Q Well, it says Wall Street -- that the -- it says that
2 the City of Stamford is a creditor of Wall Street -- of a --
3 of defendant -- of ILSR Owners, LLC, doesn't it?

4 A You said City of Stamford, you mean City of Norwalk?

5 Q City of Norwalk, yeah.

6 A Yes, it says creditors.

7 Q Do you have an understanding, as you sit here today,
8 that the City of Norwalk was a creditor of ILSR at any time?

9 ATTY. WILLIAMS: Objection, again, to the
10 relevance.

11 And I would note also, which I hadn't said
12 before, this count, Your Honor, in this complaint is
13 only against ILSR owners. In this allegation that
14 he's being asked about is only against ILSR owner
15 which is not participating in this hearing against
16 which injunctive relief is not being sought and whom
17 Attorney Rubin does not represent.

18 So there is zero relevance in starting to
19 explore that allegation, especially if it's going to
20 get into whatever the basis might have been that
21 would be covered by attorney work product and
22 attorney client privilege. But it has no relevance
23 to this proceeding whatsoever.

24 THE COURT: All right. One step --

25 ATTY. WILLIAMS: Not even under --

26 THE COURT: -- at a time. As you know, he says
27 it's relevant because the complaint was a sham which

1 allowed a prolongation of the blackout of
2 communications, let's say, with Mr. Milligan.

3 Now, I'm not saying this is necessarily going to
4 be successful in it, you know, as an assertion of
5 unclean hands and so on, but that's what's going on.

6 ATTY. WILLIAMS: Right.

7 THE COURT: I think, however -- well, you know,
8 I mean, Mr. Sheehan was asked ad infinitum about the
9 meaning of various documents, why can't the City's
10 lawyer be asked what it -- what they mean?

11 ATTY. WILLIAMS: Because it -- it's a claim that
12 was made against ILSR owners and has been withdrawn
13 and is no longer pending, so it's entirely
14 irrelevant. And it gets to the attorneys' work
15 product and mental impressions in making the claim.

16 If even under --

17 THE COURT: Well, you know, he just --

18 ATTY. WILLIAMS: -- the very loose --

19 THE COURT: -- he already answered it. He said
20 because of there -- because of the -- the property
21 interest in the -- in the property. I mean, that --
22 that's what Mr. Coppola said.

23 ATTY. WILLIAMS: If -- if even under the very
24 loose definition of unjust enrichment that the
25 defendants are trying to pursue, which hasn't been
26 pled and I believe goes beyond the case law --

27 THE COURT: Unclean hands --

1 ATTY. WILLIAMS: Thank you.

2 THE COURT: -- not unjust enrichment.

3 ATTY. WILLIAMS: Thank you. If -- if that were
4 even in play here, maybe it could pertain to count
5 two which is against the Milligan defendant.

6 Count three in this complaint is not against
7 him, that's the point I'm making, Your Honor, so I
8 object to there being further questioning about --
9 about this point.

10 ATTY. RUBIN: I can respond to that. The prayer
11 for relief asks for relief in connection with the
12 fraudulent transfer count, and it asks that the
13 conveyance of the subject property to defendant, Wall
14 Street Opportunity, LLC, be set aside and declared
15 null and void. You can't have a claim for fraudulent
16 transfer as to Party A and then claim it has nothing
17 to do and doesn't involve the property rights of the
18 transferee.

19 THE COURT: No, that's enough, I've ruled on
20 this. I mean, I -- I'm allowing it.

21 ATTY. RUBIN: I didn't hear an answer so I
22 apologize with all the discussion.

23 THE COURT: No, his prior answer, and correct me
24 if I'm wrong, Attorney Coppola, but I think when you
25 said is it your position that the City was a creditor
26 of ILSR, and I believe the witness said it related to
27 the City's interest in the property.

1 THE WITNESS: Yes.

2 **BY ATTY. RUBIN:**

3 Q I understand -- is there a distinction? Did -- does
4 the fact that the City had an interest in the property,
5 either through reentry rights, either through, you know, the
6 LDA, in your view did that make the City a creditor of ILSR?

7 THE COURT: He's asked it -- Hello.

8 ATTY. WILLIAMS: Objection, asked and answered.

9 THE COURT: Yes, sustained.

10 ATTY. RUBIN: Well, the answer is yes, it does?

11 ATTY. WILLIAMS: It's been asked and answered.

12 THE COURT: No, he said they had an interest,
13 so.

14 ATTY. RUBIN: An interest doesn't make them a
15 creditor. It -- it --

16 THE COURT: Well, you can argue it.

17 ATTY. RUBIN: Right, so I'm asking him whether
18 or not the interest makes them a creditor. You can
19 have an interest if you have a --

20 THE COURT: Okay. That's -- we're not going to
21 pursue this further. I mean, we are getting into his
22 thought process. I mean, you've established this --
23 this was filed and what the allegation was, if you
24 can show that, you know, it was baseless, you know,
25 you can do that and brief it.

26 ATTY. RUBIN: Okay.

27 **BY ATTY. RUBIN:**

1 Q Did you have any conversations with First American
2 Title at or around the time the -- within the first week or
3 so of June about First American providing title insurance to
4 Wall Street in connection with its purchase of the
5 properties?

6 A At some point after the purchase there was a title
7 company that called, you know, an attorney for a title
8 company, and I don't know if it was the title company you
9 referred to. But there was an attorney from a title company
10 who said that Mr. Milligan had given him my -- my name and
11 number, and he was looking for certain documentation to help
12 write a title policy for Mr. Milligan.

13 And I answered the questions that he had and provided
14 him, I believe I -- I may have emailed him -- I believe I
15 emailed him some of the underlying documents he was looking
16 for because he was making -- he was trying to, I believe,
17 write a title policy for Mr. Milligan.

18 And I do remember telling Mr. Milligan afterwards
19 that an attorney working for a title company that he was
20 trying to work with contacted me, and I provided the
21 information and documents he -- he asked for. And I think
22 Mr. Milligan was appreciative of -- of me providing that to
23 him.

24 THE COURT: Mr. Coppola, let me just advise you.

25 THE WITNESS: Yeah.

26 THE COURT: You should -- you want to keep your
27 answers direct. He said did you talk to somebody,

1 the answer to that is probably yes. I mean, I
2 appreciate you're being helpful, but don't, you
3 know, let him --

4 THE WITNESS: Don't be overly helpful.

5 THE COURT: Right. Not that, no, but you know
6 what I'm saying. Just --

7 THE WITNESS: I'm just --

8 THE COURT: Just answer the question as posed
9 and let him do -- go where he wants to go.

10 THE WITNESS: Understood, Your Honor.

11 A With -- with regard to that -- I don't think I spoke
12 to someone from that company, I think there may have been a
13 different title company who had contacted me.

14 **BY ATTY. RUBIN:**

15 Q Okay. Isn't it correct that you had conversations
16 with people from two different title companies?

17 A No.

18 Q Did you have any discussions with First American
19 Title that was initially the title company that was the
20 escrow agent in connection with the purchase?

21 A I believe not, no.

22 Q Did you inform First American that there was going to
23 be a lawsuit against Mr. Milligan relating to his interest
24 in the property?

25 A I don't think so.

26 Q Did you have a conversation with Dave Baghdady from
27 Stewart title? Is that the individual that you are

1 referring to?

2 A Yeah, I believe that was the attorney who contacted
3 me, and that was the only representative from a title
4 company that I ever spoke to regarding Mr. Milligan's
5 properties.

6 Q Did you tell Attorney Baghdady that there was going
7 to be a lawsuit commenced in connection with the City's
8 interest in that property?

9 A I don't remember specifically what I told him, I do
10 remember that he told me that Mr. Milligan had asked him to
11 reach out to me to get certain information and documentation
12 that he needed to write a title policy, and that I provided
13 it to him. He was appreciative, and afterwards, when I
14 spoke to Mr. Milligan, he was appreciative that I did it.

15 Q Did you tell Mr. Baghdady -- Attorney Baghdady that
16 you were going to commence a lawsuit against Mr. Milligan
17 relating to those properties?

18 ATTY. WILLIAMS: Yeah, I believe he just
19 answered that.

20 A I just --

21 ATTY. RUBIN: No.

22 A I did, I actually did just answer the question. That
23 I don't remember what I -- specifically, what was discussed.
24 I do remember taking the call, I remember being helpful to
25 him. And I remember he being appreciative and Mr. Milligan
26 being appreciative afterwards that I did so.

27 Q And the lawsuit that -- a lawsuit was commenced in

1 June that was extant until mid-September claiming an
2 interest in the property which was the fraudulent conveyance
3 lawsuit, correct?

4 A Well, there -- I think the answer is no because it
5 was a -- it was draft lawsuit that was attached to a PJR, so
6 no, a lawsuit wasn't filed.

7 Q But -- Right, I've heard that too. And, in fact, a
8 PJR application cannot form the basis for a vexatious
9 litigation claim, right?

10 ATTY. WILLIAMS: Objection. Calls for a legal
11 conclusion. It's argumentative.

12 Q Isn't it correct that there was a claim --

13 THE COURT: Sustained.

14 Q -- that there was a claim made with the court in
15 connection with the PJR that attacked the Wall Street and
16 Milligan defendants' interests in the property between June
17 and September before it was withdrawn?

18 A I don't understand any of the question.

19 Q Okay. I know it's a very confusing question, I'll
20 move on.

21 THE COURT: It's a long ten minutes, but I
22 understand, it was --

23 ATTY. RUBIN: Yeah, I know, then I digress.

24 THE COURT: -- got complicated. But I think in
25 this hearing we're -- we're getting into dog years.

26 ATTY. RUBIN: Yeah, yeah, yeah, I know, going
27 into the weeds.

1 (Pause)

2 **BY ATTY. RUBIN:**

3 Q With respect to Mr. Milligan's options, is it your
4 contention that had Mr. Milligan provided this information
5 that you requested during the pendency of these lawsuits,
6 you would have had discussions with him concerning how we
7 might deal with the situation?

8 A Yes.

9 Q Okay. And was any of that ever put in writing?

10 A Yes.

11 Q And what writing would that be?

12 A I think I testified earlier that I believe there was
13 correspondence from Attorney Williams, and I was either cc'd
14 on it or part of it, to you, specifying certain information
15 and documentation that we need in order to have those
16 meetings when you got involved.

17 Prior to that, prior to your involvement in the case,
18 I believe that we had expressed to Mr. Milligan that there
19 would be a willingness to meet with him if he provided some
20 basic information and documentation.

21 Q Yeah. To the -- there's currently discussions with
22 the City and Citibank and JHM, correct, concerning Phase I?

23 A There's discussions with Citibank concerning the
24 Phase I project.

25 Q And, in fact, something will probably may be
26 announced next week, right?

27 THE COURT: Mr. Sheehan talked about this.

1 A There is a proposal that is being -- that has been
2 submitted from -- from Citibank and will be considered by
3 the Redevelopment Agency in Executive Session or discussed
4 on, I believe it's going to be Tuesday the 12th. And the
5 Common Council will also be discussing the proposal at some
6 point probably -- right now, it's tentatively planned for
7 the 26th depending on people's schedules, including my trial
8 schedule this month.

9 Q And -- and JHM is the proposed developer in
10 connection with that, right?

11 A Yes.

12 Q Okay. To the extent that these discussions are
13 fruitful and successful --

14 A Uh-huh.

15 Q -- and -- and there would need to be an amendment to
16 the LDA, correct?

17 A I don't know if we've concluded yet that there would
18 have to be an amendment to the LDA based on what's been
19 proposed, or whether it would just be a modification of
20 conceptual master site plan. We have to do that analysis
21 once we confirm what the proposal is that is acceptable to
22 the public parties, and review whether any changes as a
23 result of the -- a plan require an amendment to the LDA.

24 Q Well, to the extent that the proposal anticipates
25 less than 256 parking spaces less ten percent, there's going
26 to need to be an amendment to the LDA, right?

27 (Pause)

1 THE COURT: Let me know when you get to a good
2 breaking point, Mr. Rubin.

3 ATTY. RUBIN: Sure.

4 A 256 minus ten percent is -- is what number?

5 Q 256 minus 26.

6 THE COURT: 240.

7 A Maybe an easier -- maybe an easier way to answer the
8 question is this.

9 THE COURT: Okay.

10 A At the time that we --

11 THE COURT: We're all stumped.

12 A Yeah, at the time that we confirm --

13 THE COURT: Gee --

14 A 'Cause I'm trying to be --

15 THE COURT: -- Mr. Milligan, I'm disappointed in
16 you.

17 MR. MILLIGAN: I said it, I didn't want to -- I
18 don't want to speak out of turn, it's 230, right?

19 A I'm trying to be precise in my answer.

20 At the time that we know -- have certainty as to what
21 the proposal is going to be, and -- and we've -- we will
22 then review it against the LDA and other underlying
23 documents. And we'll make that determination as to whether
24 or not we need to amend the LDA.

25 We have discussed -- Counsel has discussed this issue
26 already internally.

27 THE WITNESS: I don't know -- I don't know if I

1 would say anything beyond that, Your Honor.

2 **BY ATTY. RUBIN:**

3 Q Without having to reestablish, let -- let me just
4 represent to you that we understand that the LDA requires
5 256 spaces for compliance, that there is a ten percent
6 wiggle room before it becomes a substantial modification
7 requiring an amendment, that the 2008 site plan as approved
8 required 215 spaces, thereby rendering the LDA -- the
9 redeveloper in noncompliance with the LDA as of 2008.

10 And then in 2016 there was an approved modification
11 of the LDA reducing the parking from the 215 that already
12 was a substantial modification, to 155. And that --

13 THE COURT: It wasn't the LDA I don't think. Am
14 I wrong? It was the --

15 ATTY. RUBIN: Zoning.

16 THE COURT: -- it was the Zoning, you said LDA.

17 ATTY. RUBIN: Oh, I'm sorry, Zoning.

18 Q And so as a result, the position was being taken that
19 really there was no public parking that was going to be
20 offered by Citibank or JHM initially in connection with the
21 proposal because their last approval was 155 plans which may
22 barely have been enough to satisfy the private redevelopment
23 in the first instance.

24 Starting at that moment, can you explain to me do you
25 believe that based on your understanding of the negotiations
26 that there's going to need to be a modification of the LDA
27 because this -- Citibank and JHM and are not going to be

1 providing 230 parking spaces in connection with Phase I?

2 ATTY. WILLIAMS: Objection on the grounds, one,
3 that it's the longest question I've ever heard. And
4 second, asked and answered.

5 He already asked Attorney Coppola twice does it
6 need to be amended. And he said we've reviewed it
7 and we haven't made a determination yet, and we will
8 at a - at a soon date in the future.

9 THE COURT: You know --

10 ATTY. RUBIN: I'm happy to spend as much time as
11 is required to establish each of those facts. It
12 would be torture, but to the extent that Mr. Williams
13 or the Court wants me to reestablish that to get the
14 real answer about the amendment needed to the LDA, I
15 will do so.

16 THE COURT: No, I think it's perfect, I think I
17 have no reason to doubt what Mr. Coppola is saying
18 and the answer is we're analyzing it.

19 ATTY. RUBIN: Okay.

20 **BY ATTY. RUBIN:**

21 Q So it may or may not require an amendment to the LDA.
22 Is it fair to say that the -- that your position as
23 Corporation Counsel is that you really don't know yet
24 whether or not it's going to require an amendment to the
25 LDA?

26 A Yes.

27 Q Okay. And you are aware of that -- you're aware of

1 the proposal at this point in time, right?

2 A Yes.

3 Q The substance.

4 A Yes.

5 Q Are you willing to share whether or not the proposal
6 requires more than 200 parking spaces being provided by
7 Citibank or by JHM?

8 ATTY. WILLIAMS: Objection, it's the subject of
9 confidential mediation, he can't be asked about the
10 terms.

11 ATTY. RUBIN: I --

12 THE COURT: Okay.

13 ATTY. RUBIN: I have a question about that
14 because --

15 THE COURT: Well, wait a minute, wait a minute.
16 If I let you go, we'll just go all afternoon and I --
17 no insult, but we need to take the break.

18 ATTY. RUBIN: Okay.

19 THE COURT: I'm -- I'm sure you'll think of
20 things when we're on the break, and that's fine. But
21 we -- we have to let everybody's hands rest here.

22 ATTY. RUBIN: Okay.

23 THE COURT: All right. So we're going to take
24 the mid-afternoon break, we'll be back at five of
25 four. Okay.

26 THE WITNESS: Thank you, Your Honor.

27 (Recess)

1 (Back in session)

2 THE COURT: Good afternoon, please be seated.

3 ATTY. GOMES: Good afternoon, Your Honor.

4 THE WITNESS: Good afternoon, Your Honor.

5 THE COURT: Mr. Rubin.

6 ATTY. RUBIN: Thank you.

7 **BY ATTY. RUBIN:**

8 Q There was a mediation in this case over a period of
9 time between the parties relative to Phase I, right?

10 A Yes.

11 Q Has that mediation concluded?

12 A No.

13 Q Has there been a written agreement -- a written draft
14 agreement been circulated among the parties?

15 A There is a written proposal that's been submitted by
16 Citibank to the public parties, and once we confirm that the
17 counsel in Agency seem to be amenable to the terms, then we
18 would proceed with getting it approved. And, as well as at
19 that time getting approved whatever agreements we may need
20 pertaining to the underlying documents for the redevelopment
21 project.

22 Q When will those proposed terms become public?

23 A After we discuss with our clients in Executive
24 Session the proposal and -- and they ask us to move forward
25 with making it public, and starting the official approval
26 process, which won't take long.

27 Q Is there a confidentiality agreement relative to that

1 proposal as among the parties?

2 A The parties have agreed that discussions in this
3 mediation process will remain confidential until --

4 Q Is --

5 A -- until a proposal is publically submitted.

6 Q Is there a written confidentiality agreement among
7 the parties relating to confidentiality?

8 A I don't know if the documents pertaining to the
9 mediation provide in writing the confidentiality
10 requirement. However, the parties have agreed to keep the
11 discussions confidential until a proposal is publically
12 submitted.

13 Q Orally, they've just verbally agreed to keep it
14 confidential -- confidential?

15 A I believe there's also been written confirmation that
16 the parties have agreed to keep the discussions confidential
17 until a proposal is publically submitted.

18 Q So there's written confirmation of an oral agreement,
19 correct?

20 ATTY. WILLIAMS: Objection. That
21 mischaracterizes what he said.

22 THE COURT: It's unnecessary. Move --
23 Sustained.

24 ATTY. RUBIN: Okay.

25 **BY ATTY. RUBIN:**

26 Q How much public Norwalk taxpayer money is being
27 provided in connection with this Redevelopment plan?

1 A I don't know.

2 Q Including the parking lots?

3 A I don't know.

4 Q Millions?

5 ATTY. WILLIAMS: Objection, asked and answered.

6 THE COURT: I don't -- I'm not sure. Do you
7 think so?

8 ATTY. WILLIAMS: He -- he asked him how much, he
9 said I don't know. And then now he's asking him
10 specific amounts within -- within that, which he said
11 he doesn't know.

12 ATTY. RUBIN: How is that asked and answered? I
13 -- I have the right to try to narrow it down.

14 THE COURT: Well, if he says he doesn't know,
15 where are we going?

16 ATTY. RUBIN: Because he may not know the exact
17 amount, but he may know a range.

18 THE COURT: All right.

19 **BY ATTY. RUBIN:**

20 Q Can you provide a range?

21 A Not without reviewing all of the relevant documents
22 pertaining to the project.

23 Q Are you confident that whatever range you would
24 provide would be in excess of five million dollars?

25 A I would need to review the documents to confirm what
26 the number would be, I don't know.

27 Q Are you confident that it would be in excess of one

1 million dollars?

2 ATTY. WILLIAMS: Objection, asked and answered.

3 THE COURT: It's -- it's probably the last, but.

4 Q Why does the public not have a right to know what the
5 proposal is at this time relative to Phase I? Doesn't the
6 public have a right to know what's -- what is going to be --
7 what has been proposed that is now being discussed?

8 ATTY. WILLIAMS: Objection. Argumentative and
9 irrelevant. It's part of a mediation that's
10 confidential.

11 THE COURT: You know, I think the Corporation
12 Counsel of the City of Norwalk can answer that
13 question.

14 ATTY. WILLIAMS: Okay.

15 A Could you repeat the question one more time?

16 Q Why doesn't the public have a right to know?

17 A The public will know what the proposal is when
18 there's a final proposal that's been submitted. At this --
19 as you know, it's a complicated project, it's been further
20 complicated by the change of ownership of Phase II and III.
21 And so there's a lot of back and forth discussion between
22 Citibank, the City, and the Agency to confirm what would
23 potentially be terms that would be acceptable to the City
24 and Agency, as well as to Citibank.

25 So there's a lot of back and forth, and there's a lot
26 of complicated issues that require confirmation to various
27 state agencies, et cetera, without divulging any further

1 what the discussions are.

2 So once we have a proposal that we know is -- is a
3 final proposal, then it will be disclosed publically.

4 Q Is there another mediation session scheduled?

5 A There are discussions now which the parties within
6 the context of the mediation feel is more helpful than --
7 than having a mediator involved in -- in typical traditional
8 -- in a traditional mediation session.

9 I believe we're at a point where we have a proposal
10 that is almost ready to be finalized in a short period of
11 time and submitted publically for approval.

12 Q Is there another mediation session scheduled?

13 THE COURT: He's -- that's --

14 ATTY. RUBIN: It's a yes or no, he didn't answer
15 the question.

16 THE COURT: Yes, he did.

17 A I -- I did answer the question. If you'd like, I can
18 answer it again.

19 THE COURT: No, he said there -- there are
20 further discussions but probably without a mediator.

21 ATTY. RUBIN: Okay.

22 THE COURT: That's what he said.

23 A We're not having formal mediation sessions at this
24 point. But within the context of the mediation we are
25 having a proposal finalized that will be publically
26 submitted in a very short period of time.

27 Q Are you aware of whether the site plan for Phase I

1 has expired?

2 A I believe it has.

3 Q Are you aware of whether the Redevelopment plan has
4 expired?

5 A I don't know that, I don't know.

6 Q What do you know about it?

7 A The Redevelopment plan --

8 Q Yeah --

9 A -- in general?

10 Q -- in terms of its timing and expiration?

11 A I think you asked earlier about the timing before we
12 started. I -- I'd have to, you know, look at the public
13 documents. I don't represent the Redevelopment Agency, I
14 understand the tie in of the Redevelopment plan with the
15 City, I just would have to review the records in order to
16 confirm answers to your questions about timing.

17 Q To the extent that there is -- let me withdraw that.

18 Assuming this discussion is successful, the
19 discussions and negotiations that you're having with
20 Citibank and JHM, what do you anticipate would be the
21 process for approval of a site plan for Phase I properties?

22 A I believe the property owner will have to go to the
23 Planning and Zoning Commission to amend the current approval
24 -- or I should say to amend the approval that was previously
25 granted for the property, which I believe has expired.

26 Beyond that, I believe there will have to be
27 approvals by the Redevelopment Agency and the Common

1 Council. And, as I've testified earlier, we have not
2 determined yet what the form of those approvals -- meaning,
3 we haven't determined yet whether we're going to need to
4 amend the LDA or just modify the conceptual master site plan
5 or do both.

6 Q Do you anticipate public hearings in connection with
7 this process?

8 A Public -- there will be public meetings. Quite often
9 people confuse the two, though, quite frankly, there's not
10 much of a difference except for from the perspective of
11 providing legal notice if it's a public hearing.

12 So the Counsel and the Redevelopment Agency may
13 decide to officially conduct a public hearing, but from my
14 standpoint, I don't think there's really much of a
15 difference between a public hearing and having a public
16 meeting where the public is allowed to have the opportunity
17 to speak at either meeting.

18 Q In connection with the site plan approval, will
19 abutting property owners be provided with notice and the
20 right to object?

21 A I think it depends whether if you're asking the
22 question about legal rights pertaining to abutting property
23 owners for purposes of potentially appealing a land use
24 approval, as far as -- and as far as notice goes, it would
25 depend on what's being applied for. So you know, are you
26 applying to amend a special permit versus having site plan
27 approval that's over the counter approval.

1 So for example, you could have a -- a site plan
2 that's get approved over the counter, and in order to get
3 that approval, whether it be Norwalk or anywhere else in --
4 in the state, you generally don't have to provide legal
5 notice to property owners that are abutting.

6 However, there are other applications which require a
7 public hearing such as a special permit or special exception
8 application which would require certain legal notice,
9 including to abutters.

10 Q You wouldn't anticipate that the -- an amended site
11 plan of the Phase I Redevelopment would be an over the
12 counter approval, do you?

13 A I haven't looked at the issue yet, I would assume
14 not. Just please keep in mind I represent numerous other
15 municipalities and it's quite often I -- I forget which
16 municipality has -- has certain, you know, how the -- quite
17 often the -- requirements for each municipality are slightly
18 different as to what's approved over the counter versus what
19 would require a special permit or special exception
20 approval. But my assumption would be that it would require
21 a public hearing.

22 Q Do you know if this project requires a special
23 permit?

24 A At this time, no, but I could easily review the file
25 and find out pretty quickly.

26 Q And if there was a special permit, that would also
27 require public hearings which would require notice and

1 objection rights of abutters, correct?

2 A Yes, but abutters would have a right to file for any
3 approval, an appeal -- a title (indiscernible) appeal.

4 Q Right. A special permit can't be over the counter,
5 correct?

6 A From a technical standpoint could a municipality --
7 could a -- could a Planning and Zoning Commission or a
8 Zoning Commission provide within its regulations that a
9 special permit approval could be over the counter? I don't
10 know the answer to that.

11 But, generally speaking, a special permit or a
12 special exception approval would require a public hearing
13 and would require legal notice for abutting property owners.

14 Q Assuming that it goes swimmingly, it gets approved,
15 that there is a site plan amendment and it gets approved,
16 does the property owners of Phase I -- I'm sorry, of Phase
17 II, do they have an obligation, do you believe that they
18 have an obligation to undertake any redevelopment of Phase
19 II prior to there being a CO for Phase I as newly brought,
20 amended, and accepted?

21 A I don't understand the question.

22 Q Sure. Assuming that there's -- that -- that this
23 goes well, that this agreement that you've reached with
24 Citibank and JHM goes through the proper channels, has
25 whatever hearings are required, gets approved and
26 construction commences. Okay. Are you with me on that?

27 A Yes.

1 Q Does the Phase II property owner have any obligation
2 to undertake any work or redevelopment as it pertains to the
3 Phase II properties until there is a CO for that Phase I
4 property?

5 A I would have to review the Land Disposition Agreement
6 and the amendments to that Agreement before I'd answer your
7 question.

8 Q Do you believe that, as Corporation Counsel, that
9 Wall Street can seek and obtain approval from the City
10 relative to Phases II and III without regard to what happens
11 with Phase I?

12 A Wall Street is not the approved redeveloper, so the
13 answer, I believe, is no.

14 (Pause)

15 ATTY. RUBIN: May I have a moment, Your Honor?

16 THE COURT: What's that?

17 ATTY. RUBIN: May I have a moment?

18 THE COURT: Sure.

19 (Pause)

20 **BY ATTY. RUBIN:**

21 Q If -- if Wall Street was the Redeveloper for Phases
22 II and III -- no, I withdraw that. I withdraw that.

23 (Pause)

24 Q You're -- are you aware that the City is being sued
25 in connection with certain Phase I property by Mr. Diaz
26 (Phonetic)?

27 A Yes.

1 Q And what is your understanding of that lawsuit?

2 A I haven't been handling the lawsuit on behalf of the
3 City. At some point, Former Assistant Corporation Counsel,
4 Gary Colangelo (Phonetic), was handling it. And,
5 thereafter, it's been handled by Attorney Brian Candella
6 from the Law Department.

7 The Agency also has separate legal counsel in the
8 matter, so I've had very little to no involvement within the
9 -- with that -- with that case.

10 Q Can Phase I be constructed and completed without the
11 site assemblage of the Diaz property?

12 A I believe so.

13 Q What is the City's current position, in general,
14 relative to eminent domain?

15 THE COURT: Can I -- just a question --
16 information. Is -- is the Diaz property actually
17 part of Phase I?

18 ATTY. RUBIN: Well, are you aware of whether the
19 Diaz property is part of Phase I?

20 THE WITNESS: My understanding is that the Diaz
21 property is identified within the Redevelopment plan.

22 THE COURT: Right.

23 THE WITNESS: And beyond that, Your Honor, I
24 would have to review the records --

25 THE COURT: Okay.

26 THE WITNESS: -- relating to the project.

27 THE COURT: Okay.

1 THE WITNESS: It wasn't around when the project
2 was --

3 THE COURT: Yeah.

4 THE WITNESS: -- was conceived when it was
5 initially approved, et cetera. So I'd have to review
6 a lot of documentation, and probably then I could
7 give you the answer.

8 THE COURT: Okay.

9 ATTY. RUBIN: May I approach?

10 THE COURT: All right. Yes.

11 (Pause)

12 ATTY. RUBIN: Do you want to come up, Mr.
13 Williams?

14 ATTY. WILLIAMS: Yes.

15 **BY ATTY. RUBIN:**

16 Q I'm showing you what's -- I'm showing you what's been
17 marked as Exhibit D.

18 A Yes.

19 Q The map, this is a Google Map of (inaudible)
20 cardboard. Does this look familiar to you?

21 A Yes.

22 Q And what -- what does it appear to reflect?

23 A It appears to reflect the map of the area that
24 includes the subject redevelopment project, as well as other
25 properties.

26 Q Can you point out where Phase I is, what your
27 understanding of Phase I is?

1 A I wouldn't feel comfortable doing so without having
2 further records to confirm --

3 THE COURT: Well, let me just say --

4 A -- where it is.

5 THE COURT: -- I -- my understanding, right, is
6 that the -- the new road goes through Diaz, right?
7 But is the new road part of Phase I?

8 ATTY. RUBIN: According to the LDA it's -- new
9 road is to be completed in connection with Phase I.

10 THE COURT: All right. Okay. Then I'll accept
11 that.

12 **BY ATTY. RUBIN:**

13 Q So are you comfortable that this is Phase -- do you
14 want to -- Do you know what you should do? Can you look at
15 this and confirm that you have a level of comfort, or not,
16 that the overlap of the Phase's is consistent with the
17 Google Map underneath it before I can ask any questions
18 about it?

19 A I can tell you that I probably won't be comfortable
20 confirming with certainty, on the record, as to which
21 properties on this Google Map are included within Phase I,
22 II or III. I think that's something that could probably be
23 done by Mr. Sheehan, but I don't have his level of
24 understanding in involvement within this project.

25 Q Okay. Was there --

26 (Pause)

27 Q What is the City's position, in general, from --

1 well, really your office's position or understanding of the
2 current -- of the current policy towards eminent domain in
3 the City of Norwalk?

4 A City has eminent domain powers similar to other
5 municipalities in Connecticut.

6 Q Has the eminent domain powers changed since the
7 Redevelopment plan was formed in 2004?

8 A I believe there may have been changes to the
9 redevelopment powers of the Redevelopment Agency.

10 Q What do you understand that to be?

11 A Just what I said, I believe there were changes to the
12 redevelopment powers of the Redevelopment Agency which
13 preceded my time as Corporation Counsel.

14 Q Do you have an understanding as to what those changes
15 were?

16 A No.

17 Q Do you have an understanding as to whether -- do you
18 have an understanding as to how eminent domain may be
19 accomplished right now in the City of Norwalk? What is
20 required?

21 A I am aware of how eminent domain would be conducted
22 in the City of Norwalk or in any of the other municipalities
23 that I represent here in Connecticut.

24 Q How might it be accomplished in the City of Norwalk?

25 THE COURT: Well, you're not just asking about
26 the City, right? You're asking about the urban
27 renewal area.

1 ATTY. RUBIN: I'm asking him --

2 THE COURT: Because otherwise, it's not
3 relevant.

4 ATTY. RUBIN: Right. About in the -- in the
5 urban renewal area. It's really the Redevelopment
6 plan, it's a little different than urban renewal
7 plan. I mean redevelopment requires -- I think
8 redevelopment requires a finding of blight as opposed
9 to just urban renewal.

10 THE COURT: It's not quite blight. No, we're
11 just -- I'm just saying the geographical area --

12 ATTY. RUBIN: Okay.

13 THE COURT: -- is where we're talking about.

14 ATTY. RUBIN: Okay.

15 **BY ATTY. RUBIN:**

16 Q What is your understanding of how the Norwalk -- how
17 the City of Norwalk would accomplish or undertake eminent
18 domain in the City of Norwalk as it pertains -- in the
19 redevelopment area? I

20 A It would depend what the use is for. So if it's for
21 a public use, then the taking is done in -- in a manner
22 differently than if it would be maybe for some other use.

23 So if you're going to take a property by eminent
24 domain for purposes of a school or a creation of a road, the
25 taking, I believe, would be different than if you were
26 taking it for a redevelopment project. And this is all goes
27 back to the Kelo case up in New London and changes in the

1 law thereafter.

2 Q You're aware that there need to be certain property
3 sites assembled for the purposes of undertaking the
4 redevelopment contemplated by the conceptual master plan in
5 this redevelopment project, right?

6 A Vaguely familiar, yes.

7 Q Okay. How would eminent domain be undertaken in
8 connection with the site assemblage of Phase I, Phase II,
9 and Phase III properties?

10 A As I sit here right now I can't walk you through step
11 by step how eminent domain, if it was decided to be -- if
12 that action was decided to be taken, would be done. I would
13 need to spend some time reviewing the relevant documentation
14 and records in the City and Agency files, and then probably
15 brush up on my -- on my understanding of the law of eminent
16 domain and the manner in which it's conducted.

17 Q Is there currently any consideration in the
18 Corporation Counsels' Office of which you're aware relative
19 to obtaining any of the parcels in Phase I, Phase II, and
20 Phase III for site assembly purposes by eminent domain?

21 A Any discussions within the Law Department regarding
22 those issues would be confidential that I wouldn't be able
23 to disclose to you now.

24 Q The answer -- my question can be answered as a yes or
25 no without getting into any confidential information.

26 A I --

27 THE COURT: You don't have to answer it.

1 THE WITNESS: Yeah, Your Honor, it's not a yes
2 or no question.

3 THE COURT: No.

4 Q You know that the Diaz property -- the Diaz lawsuit
5 is you're being -- the City is being sued for inverse
6 condemnation, right?

7 A I'm aware of that, yes.

8 Q They're asking you to take the property, right?

9 ATTY. WILLIAMS: Well, objection. That can --
10 that's actually --

11 Q They're demanding that you take the property, right?

12 ATTY. WILLIAMS: Objection, that's, actually,
13 not what inverse condemnation is, but the complaint
14 would speak for itself.

15 THE WITNESS: Furthermore --

16 THE COURT: You can answer --

17 THE WITNESS: Further --

18 THE COURT: -- if you want, you know.

19 THE WITNESS: Well, furthermore, Your Honor,
20 there's a concern that counsel involved in that case
21 has been actively involved with discussions with Mr.
22 Milligan and possibly his counsel. So I'm
23 uncomfortable answering any questions regarding the
24 litigation -- unrelated litigation I, quite frankly,
25 think it's -- it's inappropriate to even -- for me to
26 have to answer those line of questions.

27 THE COURT: Okay. Sustained.

1 **BY ATTY. RUBIN:**

2 Q Is it your understanding that Phase I site assembly
3 includes People's Chicken and the Diaz property?

4 ATTY. WILLIAMS: It's been asked and answered,
5 and there's lack of foundation because Attorney
6 Coppola said he wasn't comfortable trying to say what
7 property --

8 THE COURT: When you say it's asked and answered
9 I don't think Mr. -- Attorney Coppola's been asked.

10 ATTY. WILLIAMS: He's been asked about what
11 properties were in each Phases, Your Honor, and he
12 said I'm not comfortable saying because I don't
13 really have a base of knowledge for it. That's what
14 he said when the map was up there.

15 ATTY. RUBIN: That was eminent domain, this
16 isn't eminent domain.

17 THE COURT: No, I asked him if --

18 THE WITNESS: But Counsel --

19 THE COURT: -- we -- I asked if Diaz was in
20 Phase I, and, you know, he wasn't sure. But it's a
21 -- it's a different question. The question is is are
22 these, the chicken place and the other place, are
23 they in Phase I.

24 ATTY. RUBIN: Yeah.

25 THE COURT: Okay. Do you know?

26 A First of all, I don't know where the People's Chicken
27 is. I don't think I've ever seen the People's Chicken so

1 I'm unfamiliar with that property that you're referring to.

2 With regard to the Diaz property, my understanding I
3 think -- and I think, as I testified earlier, is that it's
4 within the redevelopment area. Specifically, where, at this
5 point as I sit here, I don't know. I'd have to review the
6 relevant records.

7 (Pause)

8 Q Is it fair to say that the LDA as it pertains to
9 Phase I really needs to be amended under any circumstance?

10 A No.

11 (Pause)

12 Q The renovation for Phase I includes the renovation of
13 the Globe Theater, right?

14 THE COURT: Yes, Mr. Callahan?

15 ATTY. CALLAHAN: This is repetitive, Your Honor.
16 I mean, asked and answered (inaudible) --

17 ATTY. RUBIN: I've never mentioned the Globe
18 Theater.

19 THE COURT: You've already asked if the LDA
20 needs to be amended and he said he's not sure and
21 we've already discussed this. Plus it's all
22 duplicative, this is all duplicative. You've had the
23 most percipient witness testify --

24 ATTY. RUBIN: I have.

25 THE COURT: -- on these subjects which was the
26 Executive Director of the Urban Renewal Agency.

27 ATTY. RUBIN: Okay.

1 THE COURT: There's no need to -- for any of
2 this, really.

3 ATTY. RUBIN: Thanks. I have no further
4 questions, Your Honor.

5 THE COURT: Okay. Okay. Thank you.

6 ATTY. WILLIAMS: I've got some.

7 THE COURT: Mr. Williams.

8 ATTY. WILLIAMS: Thank you, Your Honor.

9 THE COURT: I should have said something
10 earlier.

11 THE WITNESS: Yeah, I was thinking the same
12 thing.

13 THE CLERK: Plaintiffs' Exhibit 40, ID for now.

14 **CROSS EXAMINATION BY ATTY. WILLIAMS:**

15 Q Good afternoon, Attorney Coppola.

16 A Good afternoon.

17 Q I just want to ask you a few things about the meeting
18 with Mr. Milligan who's (inaudible) -- about the meeting
19 with Mr. Milligan that Attorney Rubin asked you about, it
20 was May 31st, 2018 I think has been established.

21 I'm showing you what's been marked as Plaintiff's
22 Exhibit 40, can you identify the document?

23 A Yes, it's an email from Mr. Milligan to myself and
24 Mr. -- and Attorney Grenier is cc'd on it. And it's -- has
25 a date of June 2nd, 2018.

26 Q Yep. And are -- and it's a seven page document, are
27 there a few emails in there?

1 A Yes, there's multiple emails which date back before
2 June 2nd, 2018 at 10:46 p.m.

3 Q And what's the earliest one in there?

4 A The earliest --

5 THE COURT: Do you have this?

6 A -- the earliest email correspondence on this
7 document, which is Plaintiff's Exhibit 40, appears to be
8 dated June 1st, 2018 at 8:51 p.m. --

9 Q Okay.

10 A -- from Mr. Grenier to -- from Attorney Grenier to
11 Mr. Milligan where I was cc'd -- where I was included as a
12 recipient, as well.

13 ATTY. WILLIAMS: I'll offer it.

14 ATTY. RUBIN: Is it in reverse inverse order or?

15 THE WITNESS: It's in reverse.

16 ATTY. WILLIAMS: They appear to be in the usual
17 reverse order where the earliest ones are near the
18 back.

19 **BY ATTY. WILLIAMS:**

20 Q So they're emails of June 1st and June 2nd, 2018
21 involving yourself, Attorney Marc Grenier, and Jason
22 Milligan, is that right? Did I get that right, Attorney
23 Coppola?

24 A I'm sorry, could you please repeat it?

25 Q That they are emails of June 1st and June 2nd, 2018
26 involving yourself, Attorney Marc Grenier, and Jason
27 Milligan?

1 A They appear to be, but if you give me one moment and
2 let me just double check.

3 (Pause)

4 A Yes, they appear to be emails during a 24 hour period
5 of time during which I was, actually, trying to take a shore
6 -- shore vacation with my family. And so I do remember the
7 multiple emails that I had to deal with at that time, yes.

8 Q And within a day or two after that meeting?

9 A It started the day after the meeting --

10 Q Yep.

11 A -- the correspondences here, and they continued
12 through, in this document that's before me as Plaintiff's
13 Exhibit 40, Saturday June 2nd at 10:46 p.m.

14 ATTY. WILLIAMS: Plaintiff's 40 is offered, Your
15 Honor.

16 THE COURT: Any objection, Mr. Rubin?

17 ATTY. RUBIN: Yeah, I don't know, I'm reading --
18 I don't know, this is seven pages, I'm reading it.

19 Okay. I'm going to need a second because I
20 think I can keep it out but I want him to read it so
21 because I may not have an objection to keeping it
22 out.

23 THE COURT: Okay.

24 ATTY. RUBIN: Do you have an extra copy, Joe, or
25 no?

26 ATTY. WILLIAMS: No.

27 ATTY. RUBIN: Okay.

1 (Pause)

2 THE COURT: Ms. Chapman, I should have asked you
3 this earlier, are you sitting in a chair or on the
4 bench?

5 MS. CHAPMAN: I'm sitting on the chair.

6 THE COURT: Okay. Good, because that's a lot
7 more comfortable than sitting on a hard wooden bench.

8 MS. CHAPMAN: Yes.

9 THE COURT: Okay.

10 (Pause)

11 ATTY. RUBIN: I have no objection.

12 ATTY. WILLIAMS: Could you speak into the
13 microphone?

14 ATTY. RUBIN: Yeah. There -- there are pictures
15 of -- there are pictures that are reflected that are
16 -- that are reflected as attached as part of this
17 document, do you -- it would be helpful if it was a
18 complete document. Do you happen to have the photos
19 that are reflected?

20 ATTY. WILLIAMS: No, I don't -- I don't claim
21 anything about photos.

22 ATTY. RUBIN: It's not a question of what's
23 claimed, it says attached are the photos. And then
24 there's supposed to be photos. So can --

25 I have -- I have no objection to this document
26 coming in but it reflects photos that Jason sent to
27 the City relative to the property, so I -- I would --

1 I would ask that those photos be provided so that
2 this is a full document. But other than that, I
3 don't -- I'm not going to use that to object to the
4 document coming in. I would just ask that they be --

5 THE COURT: Printed and attached.

6 ATTY. RUBIN: -- printed, yeah.

7 ATTY. WILLIAMS: No, no, I don't agree to that,
8 I'm not claiming anything about photos. It has to do
9 with communications between the parties.

10 ATTY. RUBIN: Oh, wait, are they not attached?

11 ATTY. WILLIAMS: The emails says we have
12 received pictures you sent out, it doesn't say --

13 ATTY. RUBIN: They don't have to be --

14 ATTY. WILLIAMS: -- they are attached to this.

15 ATTY. RUBIN: -- they're not attached. He's
16 right, Joe is right. It referenced -- it references
17 pictures that they received, but it's not --

18 THE COURT: But not --

19 ATTY. RUBIN: -- here are the pictures attached.

20 THE COURT: -- part of that document.

21 ATTY. RUBIN: Right, right, right.

22 THE COURT: So do you --

23 ATTY. RUBIN: So I have no objection.

24 THE COURT: Okay. Exhibit 40 comes in as full.

25 And let's give the clerk the --

26 (Pause)

27 ATTY. WILLIAMS: I'm just opening it to page 5

1 of the emails, Attorney Coppola, page 5.

2 ATTY. RUBIN: Your Honor, would you like the
3 opportunity to review the entire document before
4 there are questions that are asked?

5 THE COURT: That's all right. Thank you.

6 **BY ATTY. WILLIAMS:**

7 Q And on page 5 with regard to the questions you were
8 asked by Attorney Rubin about Mr. Milligan bringing legal
9 counsel to the meeting, do you have the June 1st email from
10 Jason Milligan on page 5?

11 A Yes, it's dated June 1, 2018 and it's at 10:23 p.m.
12 And there's another -- yes --

13 Q And, actually --

14 A -- well, that's the email from him.

15 Q Thank you. And, actually, this one went to you and
16 Attorney Grenier, also to Mayor Rilling and Laoise King, his
17 Chief of Staff, correct?

18 A Yes.

19 Q And in the first line, what did Mr. Milligan say
20 about having counsel?

21 A I do not have counsel and I do not respect that
22 portion of your request. I -- do you want me to read on or
23 no?

24 Q No, that's good. Thank you. Well, yeah, actually,
25 the -- the next sentence.

26 A I will do the talking for myself.

27 Q Thank you. You can set that down just for a second.

1 I just want to ask you a little bit more about the meeting.

2 What did you, on behalf of the City, ask of Jason
3 Milligan at that meeting?

4 (Pause)

5 Q Not from the email, just from your recollection.
6 What did you ask him to do with regard to complying with the
7 LDA?

8 A My -- my recollection was that we told him that we --
9 we wanted his compliance, we wanted him to agree to -- to
10 not go forward with the transaction until it was approved by
11 the Redevelopment Agency. And, I believe, his response was
12 that he would -- he would have to talk to the seller.

13 And so what we asked him to do was to talk to the --
14 to get the -- to get the seller to agree to put off -- to
15 put off the transaction until they get the proper approval
16 from the Redevelopment Agency.

17 And I, specifically -- I remember, specifically,
18 asking him will you agree to recommend to the seller that
19 they do go through the proper process that we're -- which
20 we're asking you to do. And I -- my recollection was that
21 he agreed to -- to do that.

22 Q And what did he say about whether or not he would do
23 that before he closed on the purchase of the property?

24 A It was clear that he had agreed to do it before the
25 closing took place. Because it wouldn't make any sense
26 otherwise, because we were asking him to try to convince the
27 seller to agree to go through the process of getting

1 approval before the transfer. Once the transfer has
2 happened you can't go backwards in time.

3 So it was clearly understood by everybody in the
4 room, including Mr. Milligan, that we were asking him to --
5 to get -- to work with the seller to apply to get approval
6 from the Redevelopment Agency for the transfer before the
7 transfer would happen.

8 Q And what did you learn later had, in fact, already
9 happened before the meeting?

10 A I learned the next --

11 ATTY. RUBIN: I have to object to this. There's
12 no -- that's a supposition that it happened before
13 the meeting, so what are you, you know, there's no
14 evidence that -- that the closing took place before
15 the meeting. That's just their position that they've
16 been taking. So --

17 THE COURT: Isn't there proof of when the deed
18 was filed?

19 ATTY. RUBIN: Yeah, it was filed the next day.
20 But that --

21 THE COURT: I don't think so.

22 ATTY. RUBIN: What?

23 MR. MILLIGAN: After the meeting.

24 ATTY. RUBIN: It was filed -- there's no
25 evidence that it wasn't filed until after the
26 meeting.

27 THE COURT: Okay. And so your -- your position

1 is that a deed gets filed and there's been no closing
2 prior to it?

3 ATTY. RUBIN: My position is that it was in the
4 middle of the closing as Jason will testify to.

5 THE COURT: Well --

6 ATTY. RUBIN: He left the closing.

7 ATTY. WILLIAMS: This -- this is --

8 THE COURT: Look, I'm going to let him ask.

9 ATTY. WILLIAMS: -- this is argument now.

10 THE COURT: You can, you know, you can make all
11 these fine distinctions. Here he says I didn't
12 really lie but you may have misunderstood me, I see
13 that. We'll -- I mean, we'll hear all that. But,
14 you know, let's hear what they say and then we'll
15 hear what Mr. Milligan says.

16 ATTY. RUBIN: They can -- he can testify --
17 whatever he says, he says, I object to the question
18 because it assumes a fact not in evidence. He asked
19 him about -- he -- the question assumes that the
20 closing took place prior to the meeting, was
21 completed prior to the meeting, and that is not in
22 evidence. That was the only basis of my objection.

23 THE COURT: What do you think?

24 ATTY. WILLIAMS: Well, he should be able to
25 testify to what his understanding is of what
26 happened, and if somebody wants to contradict it,
27 they're allowed to do it. But this has just been

1 argument as to -- as to what the fact are --

2 THE COURT: Yeah.

3 ATTY. WILLIAMS: -- without the evidence to
4 support it.

5 ATTY. RUBIN: I have no objection --

6 THE COURT: Well --

7 ATTY. RUBIN: -- to the question of what
8 happened.

9 THE COURT: Why don't you -- let me, why don't
10 you reformulate a question? Okay. Just re-ask the
11 question or a question.

12 ATTY. WILLIAMS: Sure.

13 **BY ATTY. WILLIAMS:**

14 Q What -- what does the City believe had, actually,
15 happened before the meeting?

16 A It was my understanding the next -- from information
17 I received the next day that the closing took place and that
18 the property was transferred the day of the meeting.

19 And the meeting took place towards the end of the
20 day. In fact, as I testified earlier, the meeting was
21 scheduled earlier in the day and everybody, including
22 myself, afterwards felt that the meeting was purposely
23 delayed by Mr. Milligan that day so that the closing could
24 happen before the meeting took place, or during -- or when
25 the meeting was taking place.

26 I don't know the exact time that the deeds were
27 recorded on the land records, but all of us assumed that

1 there was some closing that took place that day, most
2 likely, prior to the -- to the meeting, and that Mr.
3 Milligan was probably late to the -- had delayed the meeting
4 and then was late to the meeting because he was involved
5 with that closing process.

6 Q There's been testimony that Mr. Milligan said in that
7 meeting I won't close tomorrow, is that -- is that what you
8 recall hearing, as well?

9 A Actually, I think he said he wouldn't close -- I
10 don't know if it was tomorrow or Monday, but he had
11 indicated that he -- that he would agree to not close, I
12 can't remember if it was the next day, Friday, or Monday,
13 but for some period of time he agreed not to close, not to
14 buy the property. And he also agreed during the meeting to
15 -- to reach out to the seller and to try to get the seller
16 to agree to go through the required process for getting
17 approval for a transfer.

18 Q And did you subsequently become aware that the deeds
19 were recorded on the Norwalk Land Records on May 31st, 2018
20 at 4:31 p.m., as is shown on Exhibit 21?

21 A I was, yes, I was made aware afterwards that the
22 deeds were recorded either during or shortly after our
23 meeting before the Clerk's Office closed that day.

24 Q It's not the next day, it's the same time as the
25 meeting, right? Or right about the same time in the late
26 afternoon on that date?

27 A Would you just please confirm for me? Can I see the

1 document?

2 Q Sure. I'm showing you Exhibit 21, it's up here.

3 A It says May 31, 2018 at 4:31 p.m. And that was the
4 day -- I believe that was the day that we had the meeting
5 with Mr. Milligan.

6 Q All right. So having learned -- having learned
7 afterward that the deeds were recorded then, notwithstanding
8 what he told you in the meeting, did you feel that Jason
9 Milligan had lied to City officials in the meeting?

10 A Yes, I felt that he lied to us as did everybody else
11 that I spoke to afterwards who attended the meeting.

12 Q And the email he sent you --

13 THE COURT: It looks like somebody just lied
14 today. Somebody said that it was filed the next day,
15 right?

16 ATTY. RUBIN: No, I didn't say it was filed the
17 next day.

18 THE COURT: I think you did.

19 ATTY. RUBIN: I said it was filed after the
20 meeting.

21 THE COURT: No. Somebody said the next day.

22 ATTY. WILLIAMS: I did hear that too.

23 ATTY. RUBIN: I -- then I misspoke. It was
24 filed the same day but after the meeting.

25 THE COURT: Uh-huh. Let's go on.

26 **BY ATTY. WILLIAMS:**

27 Q Going back to Exhibit 40, the emails, do you have

1 that there?

2 A Yeah.

3 Q If you look at the first page in the June 2nd, 2018
4 email to you from Mr. Milligan, what did he say to you in
5 the first sentence of that email?

6 A I admit that I was misleading at the meeting, but I
7 did not lie.

8 Q And what -- what was your reaction upon reading that
9 statement?

10 A I don't remember my reaction when I received the
11 email but, clearly, I thought that he did lie during the
12 meeting as did others -- everyone else that I spoke to who
13 attended the meeting.

14 Q All right. And did that -- that exchange impact the
15 City's trust in what Mr. Milligan told you from that point
16 forward about what he wanted to do with the property?

17 A Yes, I think it impacted the trust of both the City
18 and the Redevelopment Agency.

19 (Pause)

20 Q Shifting gears, you were asked by Attorney Rubin
21 about the amount of time that had passed between whatever
22 date it was that the City learned about Jason Milligan's
23 intention to buy the properties. And there was evidence
24 about a newspaper article dated May 18th, and the fact that
25 the City didn't sue him between May 18th and when he closed
26 on May 31st. I just want to show you Plaintiff's Exhibit 18
27 showing evidence that's the May 25th, 2018 letter that you

1 sent to ILSR owners, right?

2 A Yes.

3 Q And is that -- did you send that letter within a
4 matter of a few days after learning of the possible
5 unpermitted transfer of the property?

6 A Yes.

7 Q And you sent it to ILSR owners which was a party to
8 the LDA, right?

9 A Yes.

10 Q Now, was this -- when you learned about this
11 potential unpermitted transfer, I assume people had to do
12 some reading and digging and researching into the relevant
13 agreements?

14 A Yes.

15 Q Are they simple agreements to -- to digest and to
16 understand?

17 A No.

18 Q And was it a simple lawsuit that could be prepared or
19 drafted over night?

20 A No.

21 Q Did you -- did you believe, Attorney Coppola, after
22 that May 31st meeting, at which you had those assurances
23 from Mr. Milligan, that you needed to run into court the
24 next day?

25 A No.

26 Q Why not?

27 A Because Mr. Milligan had assured us that the property

1 -- that there would not be a closing that week, I can't
2 remember, again, if he promised it wouldn't be -- that it
3 wouldn't happen that week, or whether it wouldn't happen
4 until sometime the following week. But we were assured that
5 there wouldn't be a closing, an immediate closing.

6 Q And when you were asked about -- just to move on to a
7 different topic -- when you were asked about Attorney Rubin
8 as to what Mr. Milligan told you his -- his desires or his
9 preferences were for the property, you stated, I believe,
10 that his desire, Mr. Milligan's desires were unclear but he
11 was looking to sell the Phase II properties to Citibank.
12 And you also testified, I believe, that Mr. Milligan said
13 that as -- as time went on, the price to the bank would go
14 up.

15 A Yes.

16 Q Do you recall that testimony?

17 A Yes.

18 Q What did -- could you explain what you meant by that
19 last part, the price to the bank would go up?

20 A He said the longer that it took for the negotiations
21 the price -- the price would go up.

22 He also made various threats regarding if there was
23 ever going to be any litigation filed with him as well and
24 -- and how that would impact the cost.

25 Q What did -- what, specifically, did he threaten?

26 A I may be paraphrasing but the basic sentiment was,
27 you know, it'll be a war if we -- if you end up filing any

1 litigation against me, I'll embarrass City officials in the
2 press. And, you know, it will be an all-out war and there
3 won't be an opportunity to work with me once litigation is
4 filed. I know he expressed that sentiment to me multiple
5 times after he closed on the property and prior to the
6 filing of the lawsuit.

7 Q Did he say anything to you about what his willingness
8 to negotiate would be if a lawsuit were filed?

9 A He had said to me on multiple occasions that there
10 would no -- there would be -- that he would have no
11 willingness to negotiate with us if a lawsuit was filed.

12 And I do recollect on numerous occasions, including
13 one time in my office along with Assistant Corporation
14 Counsel, Brian McCann, telling him that, you know, we have
15 an obligation to enforce our legal rights, but that we could
16 still try to work with him.

17 He had -- he expressed concern about having to spend
18 money to retain an attorney. And I suggested that, you
19 know, it would better -- best off if he has an attorney
20 representing him. You know, even if a lawsuit was filed
21 before any real expense or time was expended that we can
22 work together with him to try to move things along and come
23 to some sort of a resolution. But he was unwilling to do
24 that, he said, if we filed the lawsuit.

25 Q When you were pressed by Attorney Rubin as to what
26 Mr. Milligan had expressed for his preference for the Phase
27 II properties, you testified, I believe, your -- that your

1 understanding was, and you had heard from Mr. Milligan, his
2 preference was to sell the Phase II properties to Citibank
3 and to keep others -- other properties. Did I get that
4 right?

5 A Yes, my understanding was that his preference would
6 be to sell either all or certain Phase II properties to
7 Citibank to allow Citibank to come up with a solution for
8 the Phase I development that wouldn't require -- that would
9 allow them to put parking on Phase II, on some or all of the
10 Phase II properties, and not have to build the underground
11 garage that was initially contemplated for the Phase I
12 development.

13 And that Mr. Milligan would then keep the other
14 properties. And I think there was discussion about him
15 offering them an option agreement where they would pay a
16 certain option fee, and the price would go up over time.

17 Q So among the various options that we've heard Mr.
18 Milligan kept wanting to meet with City official to talk
19 about, did he ever, in your various discussions and
20 meetings, did Mr. Milligan ever commit to you that I want to
21 redevelop the properties that I just bought consistent with
22 the LDA?

23 A No. However, to be clear, he had said -- well, you
24 know, if I had to officially my response is I'll -- I would
25 -- I would comply with the LDA. But he then always went on
26 to say how bad the LDA was, that it was ill conceived and
27 that everybody knows it, and it would be foolish, et cetera.

1 So he never expressed any genuine interest to be willing to
2 develop the properties that he acquired pursuant to the LDA.

3 Q What did you take him to mean when you said that he
4 said officially I'll do it?

5 A Again, I don't want to be -- I don't know if I'm
6 exactly paraphrasing -- if I'm paraphrasing exactly what he
7 said, but what was made clear to me, and I believe other
8 City officials, was that he had no intention to comply with
9 the terms of the LDA because he thought it was a bad plan.

10 I believe he publically stated that many times on
11 various blogs and probably in meetings and other times, but
12 that that was always his position, that he thought it was a
13 bad plan, and it would be foolish for him to develop the
14 properties pursuant to that plan.

15 THE COURT: Five minutes.

16 ATTY. WILLIAMS: Thank you.

17 **BY ATTY. WILLIAMS:**

18 Q Now, let me ask you about the PJR action that you've
19 been asked about here today. And the -- the argument has
20 been made by Attorney Milligan's -- excuse me, Mr.
21 Milligan's attorney several times that there was not one
22 minute or not one hour that he wasn't under some claim by
23 the City. I just want to ask did the City of Norwalk --

24 ATTY. RUBIN: Objection, that's -- that's a --
25 that's a misstatement. Object to the form before the
26 question's asked --

27 ATTY. WILLIAMS: Well, the --

1 ATTY. RUBIN: -- because it is --

2 ATTY. WILLIAMS: -- the record can be checked on
3 it --

4 THE COURT: Just --

5 ATTY. WILLIAMS: -- but I've heard -

6 THE COURT: Yeah, just ask it directly.

7 Q Has the City of Norwalk -- did the City of Norwalk
8 file any legal action against Mr. Milligan before serving
9 the PJR application on June 18th, 2018?

10 A No.

11 Q And did you or your office make any effort to prevent
12 Jason Milligan from obtaining title insurance?

13 A No.

14 Q Or from obtaining financing?

15 A No.

16 Q In fact, did you agree to help his effort to obtain
17 title insurance by speaking with the title insurance company
18 and providing them some information?

19 A Yes.

20 Q And when you spoke with that title insurance company,
21 did you say it was before or after the closing of Milligan's
22 purchase?

23 A I believe it was after the closing.

24 Q So Mr. Milligan was trying to obtain title insurance,
25 as far as you know, after the closing?

26 A Yes.

27 Q And have you been unwilling to meet with him or have

1 discussions with Mr. Milligan since the closing of the
2 property?

3 A No.

4 Q Can you just describe some of what's happened in that
5 regard?

6 A Since he acquired the properties we've had numerous
7 discussions which have in total probably lasted countless
8 hours. From early morning till, quite often, late in the
9 evening and on weekends, and while I was away on vacation.
10 I've always, to a certain point, tried to answer his
11 questions and -- and take his calls.

12 Obviously, when he got counsel at some point involved
13 in the litigation, I was no longer willing to do so.

14 Q And have you had sit down meetings in person, as
15 well?

16 A Yes.

17 Q More than one?

18 A Yes.

19 ATTY. WILLIAMS: Thank you, nothing further.

20 THE COURT: Mr. Rubin.

21 ATTY. RUBIN: Yeah.

22 **REDIRECT EXAMINATION BY ATTY. RUBIN:**

23 Q Isn't it correct that you told Jason Milligan on
24 several occasions that you wouldn't have any conversations
25 with him about the parcels unless and until he became
26 redeveloper?

27 A I don't know if in the past I said that we wouldn't

1 work with him until he officially became the redeveloper, I
2 don't think that's accurate.

3 Q Did you tell me in a conversation that you had with
4 me that you wouldn't have any discussions with Jason
5 substantively about the properties unless or until he became
6 redeveloper?

7 A I think what I have -- what I've said to you was that
8 there's certain information and documentation that we've
9 requested from Mr. Milligan and, in fact, if you check your
10 emails I believe there is email correspondence from Attorney
11 Williams and I where we said, you know, here's certain
12 information and documentation that we need in order to sit
13 down with Mr. Milligan. That would have been -- so that --
14 so therefore, that meeting that we proposed would have
15 happened before he would have been approved as a
16 redeveloper. So to answer your question, no, I don't think
17 that's accurate.

18 And, furthermore, we have met with you and Mr.
19 Milligan since the litigation was filed, as well.

20 Q Did you tell me before that meeting that the only
21 purpose of that meeting was to discuss what needed to be
22 requested in order for Jason to seek to become and for you
23 to approve him as Redeveloper?

24 ATTY. WILLIAMS: Objection. Is this talking
25 about the settlement discussion meeting that we heard
26 about --

27 ATTY. RUBIN: No --

1 ATTY. WILLIAMS: -- that was held this --

2 ATTY. RUBIN: -- this is talking about the
3 discussions prior to the settlement discussions,
4 prior to that meeting.

5 A When somebody is submitting to become the Redeveloper
6 there's going to be questions that come up. And so
7 certainly, I think we were all amenable to, if the required
8 information and documentation or even most of it was
9 provided, to try to work with Jason going through the
10 process.

11 (Whereupon colloquy between the Court and the
12 Monitor is omitted)

13 Q I don't believe that that was responsive to my
14 question. My question was did you tell me that you would
15 agree to a meeting only if the meeting was limited to a
16 discussion about what Jason needed to do in order to seek to
17 become Redeveloper?

18 A I don't remember, specifically, saying that to you.
19 I would tell you that quite often in meetings Jason wanted
20 to come unprepared without the basic documentation that a
21 serious developer would come to a meeting with because he
22 didn't want to invest, as he told me numerous times, the
23 money and time to come up to develop actual plans.

24 He quite often wanted to have meetings for purposes
25 of, like, spit balling, just talking about various ideas.
26 And if you look at the numerous correspondences with Mr.
27 Milligan and City officials, that's exactly what he's always

1 proposed to do.

2 So in my discussions with you, I'm assuming that my
3 -- my suggestion was that the meetings focus on what he
4 needs to provide to us to be able to seriously consider
5 whatever he's proposing.

6 Q I'm not -- All right. There's a difference between a
7 meeting focusing on something and a meeting not including
8 something, specifically, excluding something.

9 Was it your position that you would meet with Jason
10 only for the sole purpose of becoming how he might become
11 Redeveloper and that you would not engaged him in
12 substantive discussions otherwise unless and until he became
13 Redeveloper?

14 A No, I don't think I ever took that hardline stance
15 that there would be no discussions with him until he became
16 the Redeveloper.

17 Just to be clear, we never received from Mr. Milligan
18 an actual viable plan for the Phase II and Phase III
19 properties, a professional plan that we could -- along with
20 the other information that we requested.

21 Q Is -- is a plan due for Phase II and Phase III under
22 the LDA for plans for Phase -- for those Phases?

23 A As Corporation Counsel for the City, if -- and I'm
24 trying to answer your question --

25 Q Sure.

26 A -- but I'm trying to give you context for it. As
27 Corporation Counsel for the City, I can't be with every

1 single property owner who wants to discuss what they may
2 want -- may or may not want to do with their property for
3 hours and hours.

4 If somebody wants to schedule a meeting with me or
5 other high level City staff to discuss a project, they
6 typically do so by providing us with actual plans to review
7 and -- and it becomes, therefore, it becomes a fruitful
8 meeting.

9 So the frustration with Mr. Milligan was quite often
10 that he didn't want to provide any of those things that a
11 typical developer who was serious about developing a
12 property would provide to high level City officials in
13 discussing a project.

14 And, quite often, he told me that the reason he
15 didn't want to do it is because he didn't want to spend the
16 money.

17 Q Well, how would Mr. Milligan, in your view, prepare
18 plans for Phase II when the site plan as approved for Phase
19 I included part moving the Phase I parking to Phase II?

20 THE COURT: No, come on.

21 ATTY. WILLIAMS: Objection.

22 THE COURT: No, we're not here to argue about
23 it. Whether you think it's right or it makes sense
24 or not, we're not going to have that discussion.

25 You're entitled to what his recollection is and what
26 was said, what the facts were, but we're not going to
27 have an argument about whether what he said was

1 sensible or any of that.

2 ATTY. RUBIN: Okay.

3 **BY ATTY. RUBIN:**

4 Q Were you -- did you receive emails from Jason over
5 the course of the summer and fall that reflected that he
6 wanted to become Redeveloper, and that he wanted to become
7 Redeveloper of Phases II and III?

8 A I believe so.

9 Q Okay. And what is the position of the public parties
10 or of the City now relative to sitting down and
11 discussing --

12 THE COURT: We'll be out of here in a minute.

13 Q -- and --

14 THE COURT: I'm saying that to the marshal.

15 Q -- and discussing plans with Mr. Milligan for how
16 Phases II and Phase III might proceed?

17 A I think the best way to answer your question is I
18 would suggest that you refer back to the emails that were
19 sent to you where we worked really hard on our end
20 internally to determine what was the absolute minimal amount
21 of information and documentation we would need to be able to
22 have those meetings.

23 And I do remember spending a lot of time discussing
24 that internally. And we were literally trying to determine
25 what's the absolute minimal amount of information and
26 documentation we would need to be able to have those
27 meetings.

1 And we spent a lot of time figuring it out, and we
2 were disappointed when the response was no when we asked for
3 that in order to have those meetings.

4 THE COURT: All right. We're done. We have to
5 -- we have to leave now.

6 ATTY. RUBIN: Oh, okay.

7 THE COURT: I'm not saying, you know, I mean, I
8 just --

9 ATTY. RUBIN: Right, right.

10 THE COURT: We have to leave the --

11 ATTY. RUBIN: I understand, we're done for the
12 day.

13 THE COURT: We -- yes.

14 ATTY. RUBIN: Okay. I understand.

15 THE WITNESS: Your Honor, before we leave can I
16 ask about the scheduling standpoint to know what my
17 obligation is for returning here, Your Honor?

18 THE COURT: Sure.

19 THE WITNESS: Because I believe it was indicated
20 I'm not available tomorrow for personal reasons.

21 THE COURT: Right.

22 ATTY. WILLIAMS: I really don't think the
23 hearing should have to stay open for more recross on
24 this, Your Honor. I mean, this is recross, it's
25 discretionary in the court. There already has been
26 some and it's repetitive and redundant just like the
27 original question was.

1 THE COURT: Well --

2 ATTY. WILLIAMS: So we shouldn't have to bring
3 Attorney Coppola back.

4 THE COURT: -- I -- you know, we'll talk about
5 this tomorrow. And -- and if, you know, Mr. Rubin
6 can think about it and see if he does need to talk to
7 you some more. But it's not going to be tomorrow,
8 and we'll try to accommodate you.

9 THE WITNESS: Thank you. And then next week I'm
10 -- actually, for most of this month I'm on trial but
11 I have given my availability to Counsel.

12 THE COURT: Yeah, well, let's see what's -- and
13 I -- and we'll decide if there's anything that hasn't
14 been covered.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: Okay. All right. Let's stand
17 adjourned.

18 ATTY. WILLIAMS: Thank you. Good night, Your
19 Honor.

20 ATTY. GOMES: Thank you.

21 THE WITNESS: Thank you.

22 *****

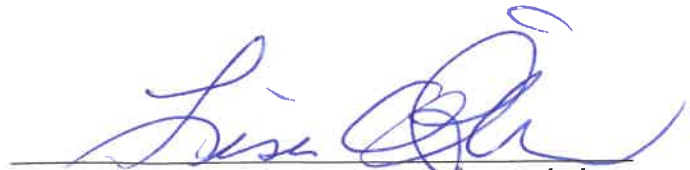
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NO: FST-CV18-6038249-S : SUPERIOR COURT
REDEVELOPMENT AGENCY OF THE CITY : JUDICIAL DISTRICT
OF NORWALK, ET AL OF STAMFORD/NORWALK
V. : AT STAMFORD, CONNECTICUT
ILSR OWNERS, LLC, ET AL : MARCH 6, 2019

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk at Stamford, Connecticut, before the Honorable Charles Lee, Judge, on March 6, 2019.

Dated March 12, 2019 in Stamford, Connecticut.

A handwritten signature in blue ink, appearing to read "Lisa O'Shea", is written over a horizontal line.

Lisa O'Shea
Court Recording Monitor